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WHEN: Tuesday, November 19, 2013
9 a.m.-12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



Contents

Federal Register

Vol. 78, No. 210

Wednesday, October 30, 2013

Agriculture Department

See Forest Service

See National Agricultural Statistics Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64907–64909

Census Bureau

NOTICES

2013 Company Organization Survey, 64911–64912

Annual Retail Trade Survey, 64912

Centers for Disease Control and Prevention

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64942–64943

Centers for Medicare & Medicaid Services

NOTICES

Medicare Program:

Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2014, 64953–64956

Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2014, 64943–64951

Part A Premiums for CY 2014 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement, 64951–64953

Coast Guard

RULES

Drawbridge Operations:

Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, VA, 64886–64887

Upper Mississippi River, Hannibal, MO, 64887–64888

PROPOSED RULES

Carriage of Conditionally Permitted Shale Gas Extraction Waste Water in Bulk, 64905–64906

Commerce Department

See Census Bureau

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

See Patent and Trademark Office

Commission of Fine Arts

NOTICES

Meetings:

Commission of Fine Arts, 64926

Comptroller of the Currency

PROPOSED RULES

Loans in Areas Having Special Flood Hazards, 65108–65144

Copyright Royalty Board

NOTICES

Distribution of the 2000, 2001, 2002 and 2003 Cable Royalty Funds, 64984–65006

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Annual Performance Reports for Title III and Title V Grantees, 64929

Beginning Postsecondary Students Longitudinal Study, 64927

High School Equivalency Program Annual Performance Report, 64927–64928

Rehabilitation Services Administration Grant Re-allotment Form, 64928–64929

Survey of Principals of Rural Schools Receiving School Improvement Grants and Using the Transformation, 64926–64927

Targeted Teacher Shortage Areas Nationwide Listing, 64929

Meetings:

National Advisory Committee on Institutional Quality and Integrity, 64929–64930

Open Forum on College Value and Affordability and College Ratings System, 64930–64931

Employment Standards Administration

See Wage and Hour Division

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Meetings:

Advanced Scientific Computing Advisory Committee, 64931–64932

Biomass Research and Development Technical Advisory Committee, 64932–64933

Environmental Management Site-Specific Advisory Board, Nevada, 64932

Environmental Protection Agency

PROPOSED RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

North Carolina; Non-interference Demonstration for Removal of Federal Low-Reid Vapor Pressure Requirement for the Raleigh–Durham–Chapel Hill Area, 64896–64905

NOTICES

Meetings:

Dichloromethane and N-Methylpyrrolidone TSCA Chemical Risk Assessment, 64936–64937

Pesticide Products:

Registration Applications for New Active Ingredients, 64937–64938

Pesticide Registrations:

Product Cancellation Orders, 64938–64940

Farm Credit Administration

PROPOSED RULES

Loans in Areas Having Special Flood Hazards, 65108–65144

Federal Aviation Administration**PROPOSED RULES**

Airworthiness Directives:

B–N Group Ltd. Airplanes, 64894–64896

Federal Deposit Insurance Corporation**PROPOSED RULES**

Loans in Areas Having Special Flood Hazards, 65108–65144

Federal Energy Regulatory Commission**NOTICES**

Applications:

Pepperell Hydro Co., LLC, 64933–64934

Texas Eastern Transmission, LP, 64933

Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorization:

BTG Pactual Commodities (US) LLC, 64934–64935

Petitions for Declaratory Orders:

Enbridge Pipelines (FSP) LLC, 64935

Preliminary Determinations of Qualifying Conduit

Hydropower Facilities:

Borough of Ellwood City, PA, 64935–64936

Federal Maritime Commission**NOTICES**

Agreements Filed, 64940–64941

Ocean Transportation Intermediary License Reissuances, 64941

Ocean Transportation Intermediary License Revocations and Terminations, 64941

Federal Motor Carrier Safety Administration**NOTICES**

Qualification of Drivers; Exemption Applications:

Diabetes Mellitus, 65031–65032, 65034–65038

Vision, 65032–65034

Federal Reserve System**PROPOSED RULES**

Loans in Areas Having Special Flood Hazards, 65108–65144

NOTICES

Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 64941

Federal Trade Commission**RULES**

Redelegation of Authority to Determine Appeals under the Freedom of Information Act, 64885–64886

Fine Arts Commission*See* Commission of Fine Arts**Fish and Wildlife Service****NOTICES**

Environmental Assessments; Availability, etc.:

Tualatin River National Wildlife Refuge, Washington and Yamhill Counties, OR, 64969–64970

New Deadlines for Public Comment on Draft Environmental Documents, 64970–64971

Permits:

Endangered and Threatened Species, 64971–64972

Food and Drug Administration**NOTICES**

Meetings:

Endocrinologic and Metabolic Drugs Advisory Committee, 64956–64957

Gastrointestinal Drugs Advisory Committee and Drug Safety and Risk Management Advisory Committee, 64957

Foreign-Trade Zones Board**NOTICES**

Expansions of Subzones:

Subzone 99E, Delaware City Refining Co. LLC, New Castle County, Delaware, 64912–64913

Forest Service**NOTICES**

Environmental Impact Statements; Availability, etc.:

Invasive Plant Control Project, Carson and Santa Fe

National Forests, New Mexico; Correction, 64909–64910

Meetings:

Virginia Resource Advisory Committee, 64910

General Services Administration**NOTICES**

Meetings:

Government-wide Travel Advisory Committee, 64941–64942

Presidential Commission on Election Administration, 64942

Geological Survey**NOTICES**

Meetings:

National Earthquake Prediction Evaluation Council, 64973

Scientific Earthquake Studies Advisory Committee, 64973

Health and Human Services Department*See* Centers for Disease Control and Prevention*See* Centers for Medicare & Medicaid Services*See* Food and Drug Administration*See* National Institutes of Health**RULES**

Patient Protection and Affordable Care Act; Program Integrity:

Exchange, Premium Stabilization Programs, and Market Standards; Amendments to HHS Notice of Benefit and Payment Parameters for 2014, 65046–65105

Homeland Security Department*See* Coast Guard*See* U.S. Customs and Border Protection**Interior Department***See* Fish and Wildlife Service*See* Geological Survey*See* Land Management Bureau*See* Reclamation Bureau**International Trade Administration****NOTICES**

Antidumping and Countervailing Duty Administrative Reviews; Results, Extensions, Amendments, etc.:

Circular Welded Carbon Steel Pipes and Tubes from Turkey, 64916–64918

Antidumping and Countervailing Duty Orders; Results, Extensions, Amendments, etc.:

Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; Changed Circumstances Review, 64913–64914

Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Citric Acid and Certain Citrate Salts from Canada, 64914–64915
Applications for Duty-Free Entry of Scientific Instruments, 64916

International Trade Commission

NOTICES

Determinations:
Computer and Computer Peripheral Devices, and Components Thereof, and Products Containing Same, 64977–64979

Justice Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Community Oriented Policing Services Progress Report, 64979

Labor Department

See Occupational Safety and Health Administration
See Wage and Hour Division

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports, 64981–64982
Disclosures for Participant Directed Individual Account Plans, 64980–64981
Notice of Law Enforcement Officer's Injury or Occupational Disease and Notice of Law Enforcement Officer's Death, 64979–64980

Land Management Bureau

NOTICES

Nominations:
Carrizo Plain National Monument Advisory Committee, CA, 64973–64974
Plats of Surveys:
New Mexico, 64974
Realty Actions:
Modified Competitive Sealed-Bid Sale of Public Land at Schoolhouse Butte (N–85116), Humboldt County, NV; Correction, 64974

Library of Congress

See Copyright Royalty Board

National Aeronautics and Space Administration

NOTICES

Meetings:
National Space-Based Positioning, Navigation, and Timing Advisory Board, 65006

National Agricultural Statistics Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64910–64911

National Credit Union Administration

RULES

Filing Financial and Other Reports, 64883–64885
Liquidity and Contingency Funding Plans, 64879–64883

PROPOSED RULES

Loans in Areas Having Special Flood Hazards, 65108–65144

National Highway Traffic Safety Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 65038–65040

National Institutes of Health

NOTICES

Meetings:

Center for Scientific Review, 64958–64968
Center for Scientific Review; Amended, 64959
National Cancer Institute, 64958–64959
National Center for Complementary and Alternative Medicine, 64963
National Institute of Allergy and Infectious Diseases, 64962, 64964
National Institute of Biomedical Imaging and Bioengineering, 64966
National Institute on Aging, 64963
National Institute on Drug Abuse, 64958, 64960, 64962, 64965–64966
Office of the Director, 64964

National Oceanic and Atmospheric Administration

RULES

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic:
Reopening of the Commercial Harvest of Gulf King Mackerel in Western Zone, 64888–64889
Fisheries of the Exclusive Economic Zone Off Alaska:
Atka Mackerel in the Bering Sea and Aleutian Islands Management Area, 64891
Atka Mackerel in the Bering Sea and Aleutian Islands Management Area; Closure, 64892–64893
Pacific Ocean Perch in the Bering Sea and Aleutian Islands Management Area; Closure, 64891–64892
Fisheries of the Northeastern United States:
Northeast Multispecies Fishery; Emergency Rule Extension, Georges Bank Yellowtail Flounder and White Hake Catch Limits and GOM Cod Carryover Revisions, 64889–64890

NOTICES

Meetings:

Interagency Ocean Observation Committee, Data Management and Communications Steering Team, 64918

Takes of Marine Mammals Incidental to Specified Activities:

Rocky Intertidal Monitoring Surveys along the Oregon and California Coasts, 64918–64925

Nuclear Regulatory Commission

NOTICES

Inspections, Tests, Analyses, and Acceptance Criteria:
Vogtle Electric Generating Plant, Unit 3, 65007

Meetings:

ACRS Subcommittee on Fukushima, 65008
ACRS Subcommittee on Planning and Procedures, 65007–65008
ACRS Subcommittee on U.S. Evolutionary Power Reactor, 65008–65009
Advisory Committee on Reactor Safeguards, 65009–65010

Occupational Safety and Health Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Aerial Lifts Standard, 64982–64983

Patent and Trademark Office**NOTICES**

Proposed Elimination of Patents Search Templates, 64925–64926

Personnel Management Office**RULES**

Federal Employees Health Benefits and Dental and Vision Insurance Programs:

Expanding Coverage of Children; Federal Flexible Benefits Plan; Pre-Tax Payment of Health Benefits Premiums, 64873–64879

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Application for 10-Point Veteran Preference, 65010

Meetings:

Hispanic Council on Federal Employment; Cancelling and Re-scheduling, 65010–65011

Privacy Act; Systems of Records, 65011–65014

Postal Regulatory Commission**NOTICES**

New Postal Products, 65014–65017

Reclamation Bureau**NOTICES**

Environmental Impact Statements; Availability, etc.:

Elum Reservoir Pool Raise, Yakima River Basin Water Enhancement Project, Integrated Water Resource Management Plan, Kittitas County, WA, 64976–64977

Keechelus Reservoir-to-Kachess Reservoir Conveyance and Kachess Inactive Storage, Yakima River Basin Water Enhancement Project, Integrated Water Resource Management Plan, Kittitas County, WA, 64975–64976

Securities and Exchange Commission**NOTICES**

Applications:

VTL Associates, LLC, et al., 65017–65023

Self-Regulatory Organizations; Proposed Rule Changes:

Chicago Board Options Exchange, Inc., 65023–65026

Options Clearing Corp., 65027–65030

State Department**NOTICES**

Appointments:

Performance Review Board, 65030

Statistical Reporting Service

See National Agricultural Statistics Service

Surface Transportation Board**NOTICES**

Abandonment Exemptions:

Chicago Central and Pacific Railroad Co., Linn County, IA, 65040

Joint Relocation Project Exemptions:

BNSF Railway Co., CBEC Railway Inc.; Iowa Interstate Railroad, Ltd.; and Union Pacific Railroad Co., Council Bluffs, IA, 65040–65041

Transportation Department

See Federal Aviation Administration

See Federal Motor Carrier Safety Administration

See National Highway Traffic Safety Administration

See Surface Transportation Board

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Approval of Underwriters of Marine Hull Insurance, 65030–65031

Treasury Department

See Comptroller of the Currency

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 65041–65044

U.S. Customs and Border Protection**NOTICES**

Meetings:

Advisory Committee on Commercial Operations of Customs and Border Protection, 64968–64969

Wage and Hour Division**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64984

Separate Parts In This Issue**Part II**

Health and Human Services Department, 65046–65105

Part III

Farm Credit Administration, 65108–65144

Federal Deposit Insurance Corporation, 65108–65144

Federal Reserve System, 65108–65144

National Credit Union Administration, 65108–65144

Treasury Department, Comptroller of the Currency, 65108–65144

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR

89064873
89264873
89464873

12 CFR

741 (2 documents)64879,
64883
74864883

Proposed Rules:

2265108
17265108
20865108
33965108
39165108
61465108
76065108

14 CFR**Proposed Rules:**

3964894

16 CFR

464885

33 CFR

117 (2 documents)64886,
64887

40 CFR**Proposed Rules:**

5264896

45 CFR

14465046
14665046
14765046
15365046
15565046
15665046

46 CFR**Proposed Rules:**

15364905

50 CFR

62264888
64864889
679 (4 documents)64891,
64892

Rules and Regulations

Federal Register

Vol. 78, No. 210

Wednesday, October 30, 2013

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890, 892, 894

RIN 3206-AM55

Federal Employees Health Benefits Program and Federal Employees Dental and Vision Insurance Program: Expanding Coverage of Children; Federal Flexible Benefits Plan: Pre-Tax Payment of Health Benefits Premiums: Conforming Amendments

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a final rule to amend the Federal Employees Health Benefits Program (FEHB) regulations regarding coverage for children up to age 26. The regulations also allow children of same-sex domestic partners living in states that do not allow same-sex couples to marry to be covered family members under the FEHB and the Federal Employees Dental and Vision Insurance Program (FEDVIP).

DATES: This final rule is effective beginning January 1, 2014.

FOR FURTHER INFORMATION CONTACT:

Rachel Royster, Program Analyst,
Rachel.Royster@opm.gov or (202) 606-4181.

SUPPLEMENTARY INFORMATION: On July 20, 2012, OPM published proposed regulations in the *Federal Register* (77 FR 42914-42918) to expand coverage of children under the FEHB Program and FEDVIP. Comments were requested to be received on or before September 18, 2012. After reviewing the comments received, OPM has decided to release this final regulation as proposed with several changes. The most significant change to this regulation is that eligibility for the children of same-sex

domestic partners is limited to those states in which same-sex couples are unable to marry. We have also made several other minor changes. First, we have added language reflecting that children under the age of 26, or children of any age who are incapable of self-support because of a mental or physical disability which existed before age 26, are considered family members under the FEHB Program. Second, the final rule changes the period of time within which notification of the termination of a domestic partnership must be provided to the employing office from 7 to 30 days, and permits either the enrollee or the domestic partner to provide the notification. These changes will align the rules on such notifications with those for other programs OPM administers, such as the Federal Long Term Care Insurance Program. Third, the language in section 890.302(b)(6) has been modified slightly to make it consistent with the language in sections 892.102 and 894.403. Fourth, the language in section 890.804(b)(i) has been changed slightly to reflect the terminology used in the statute. Fifth, the definition of “stepchild” was modified to clarify that the term includes children of former spouses or eligible same-sex domestic partners where the child continues to live with the enrollee in a regular parent-child relationship.

As explained in the proposed rule, this regulation: (1) Brings FEHB rules into compliance with changes to health insurance coverage for children under the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152 (the Affordable Care Act); (2) extends FEHB and FEDVIP benefits to children of same-sex domestic partners of Federal employees who live in states that do not allow same-sex couples to marry, consistent with Presidential Memoranda issued on June 17, 2009, and June 2, 2010; (3) makes other non-substantive, technical conforming amendments to the FEDVIP rules, which reference current FEHB rules that are being amended by this rule; and (4) updates the Federal Flexible Benefits Plan: Pre-Tax Payment of Health Benefits Premiums (Part 892) rules to reflect the above-referenced changes required by the Affordable Care Act and to implement changes in

connection with the extension of FEHB coverage to children of same-sex domestic partners of Federal employees.

Analysis of and Responses to Public Comments

We received 17 comments on the proposed rule, with a majority relating to the extension of coverage to children of same-sex domestic partners under the FEHB Program and FEDVIP. A majority of commenters (about 3 to 1) supported extending coverage to children of same-sex domestic partners. Other comments and OPM’s responses are detailed below. One comment related to the requirement that money deposited in a flexible spending account be forfeited if eligible expenses are not incurred within the timeframe specified by the Internal Revenue Service (IRS). That issue is outside of the scope of this proposed rule and is therefore not addressed below.

Comment: Multiple commenters recommended that OPM adopt the policy found in the FEHB Handbook that allows stepchildren to remain on their Federal employee or annuitant parents’ insurance even after a domestic partnership between the Federal employee or annuitant and his or her same-sex domestic partner has ended. The commenters noted that currently, the policy governing the FEHB Program allows stepchildren to continue to be covered by the enrollee’s Self and Family enrollment after the enrollee divorces the child’s natural parent if the child is living with the enrollee in a parent-child relationship. The commenters asserted that extending this policy to children of same-sex domestic partners would protect a child if a relationship between the enrollee and the child continues beyond the enrollee’s relationship with his or her same-sex domestic partner. The commenters also requested that OPM expand the current policy to provide coverage for children after the domestic partnership ends not only if the child lives with the enrollee in a parent-child relationship, but also if the enrollee provides “substantial ongoing support” for the child.

Response: OPM agrees with the commenters and has added language to the definition of “stepchild” to clarify that the term shall continue to refer to a child who continues to live with the enrollee in a regular-parent child

relationship after divorce from the spouse, termination of the domestic partnership, or the death of the spouse or domestic partner. OPM considers the fact that the child lives with the enrollee in a regular parent-child relationship as integral in establishing the continued existence of the parent-child relationship between the enrollee and the child. OPM intends for children of same-sex domestic partners to be treated the same as currently eligible stepchildren. OPM does not intend to expand its policy to cover children who are not stepchildren, as defined here, whose only relationship to the enrollee is that of a child of a former spouse or domestic partner.

Comment: Two commenters suggested that OPM's proposed definition of stepchild to include the children of same-sex domestic partners is beyond the scope of OPM's authority and violates Section 3 of the Defense of Marriage Act (DOMA), 1 U.S.C. 7 (Pub. L. 104–199).

Response: OPM is granted the authority in 5 U.S.C. 8913 to prescribe regulations necessary to carry out the FEHB Program. OPM's authority with respect to defining eligible children is especially broad, as Congress, in the FEHB Act, provided a non-exclusive list of examples of the types of children who may be eligible for coverage. OPM has historically, through its regulations and other communications, established rules and provided guidance on specific parent-child relationships and eligibility for FEHB coverage. Here, exercising its long-held discretion in this area, OPM has determined that coverage may be extended to children of the same-sex domestic partners of certain Federal employees and annuitants through a regulation defining the term "stepchild" as that term is used in the law governing the FEHB Program. The definition of "stepchild" set forth in this regulation appropriately encompasses and reflects the variety of parent-child relationships that exist today.

It should be noted that, as an alternative to adding a definition of the term "stepchild," OPM also considered including in the regulation a new category of child—the child of a same-sex domestic partner—that would have expanded upon the examples of types of children that Congress provided in the statute (e.g., adopted child, recognized natural child, stepchild and foster child). While there are a number of approaches that would have been reasonable, OPM chose the approach of adding a definition of the term "stepchild" because this nomenclature specifically recognizes the parent-child

relationship between the employee (annuitant)/parent and the child.

Although the comment that this regulation violates DOMA is no longer relevant in light of the Supreme Court's June 26, 2013 decision striking down Section 3 of DOMA as unconstitutional, it is important to emphasize that this regulation was not in violation of Section 3 of DOMA even while that provision was in force. Section 3 of DOMA limited the meaning of the terms "marriage" and "spouse," when used in Federal laws. Through this regulation, OPM has expanded its definition of the term "stepchild" with respect to the provision of healthcare benefits for children. Consequently, Section 3 of DOMA simply had no bearing on this regulation, and these recommended changes were always within the purview of OPM's discretion. Finally, as explained in the proposed rule and as explained in greater detail below, the change is consistent with Executive Order 13563 and President Obama's memoranda of June 17, 2009, and June 2, 2010.

Comment: One commenter suggested that OPM only recognize same-sex domestic partnerships in states that do not recognize same-sex marriage or where a similar relationship, such as a civil union, is not permitted.

Response: At the time this rule was issued in proposed form, Section 3 of DOMA, 1 U.S.C. 7, prohibited OPM from recognizing same-sex marriages. Section 3 of DOMA provided that, when used in a Federal law, the term "marriage" meant only a legal union between one man and one woman as husband and wife, and that the term "spouse" referred only to a person of the opposite sex who is a husband or wife. Thus, the availability of same-sex marriage in a particular state was not relevant to our determination of coverage eligibility for the children of enrollees' same-sex domestic partners. As explained above, on June 26, 2013, the Supreme Court struck down Section 3 of DOMA as unconstitutional. Subsequent to the Supreme Court's ruling, OPM issued administrative guidance explaining that legally married same-sex spouses and any newly eligible (step)children of Federal employees and annuitants would be eligible to participate in the FEHB and FEDVIP, irrespective of the employees' or annuitants' state of residence.

Now that FEHB and FEDVIP coverage is available to the children of an employee's same-sex spouse, OPM has reconsidered the need and scope of the proposed rule to extend benefits to the children of same-sex domestic partners. Although there are arguments that could

support a decision by OPM to move ahead with the uniform, national rule originally contemplated in the proposed regulation, OPM has decided to limit this regulation to those same-sex couples living in states where marriage is not available to them.

Only a minority of states currently permits same-sex marriage, and therefore, many same-sex couples do not have the same access to marriage that is available to opposite-sex couples. Until marriage is available to same-sex couples in all fifty states, the extension of benefits to same-sex domestic partners will continue to play an important role in bridging the gap in legal treatment between same-sex and opposite-sex couples.

For these reasons, this proposed regulation to provide FEHB and FEDVIP benefits to the stepchildren of same-sex domestic partners will not be withdrawn in whole, but instead will be tailored to those couples who are unable to marry under the laws of the state in which they reside.

Same-sex couples living in states that allow them to marry have access to many, if not all, of the protections that married opposite-sex couples enjoy. Therefore, for employees living in states where they are able to marry, there is less need to create a separate path by which stepchildren of Federal employees can be deemed eligible for coverage under FEHB and FEDVIP. For those employees unable to marry under the laws of the states in which they live, however, it is appropriate to extend FEHB and FEDVIP eligibility to stepchildren, albeit in a potentially non-tax preferred manner, in the form described in this regulation.

We recognize that the legal landscape is rapidly changing, and certain states that currently do not allow same-sex couples to marry may soon allow them to do so. Same-sex couples may also relocate from states where they cannot marry to states where they are permitted to marry. The possibility that the relevant state marriage laws may change mid-year has the potential to create significant administrative difficulties. For this reason, eligibility for FEHB and FEDVIP coverage will be determined once annually, and will depend on whether an enrollee seeking to cover the child of his or her same-sex domestic partner lives in a state that authorizes same-sex marriage as of the last day prior to Open Season for enrollment in benefits for the following year. An otherwise eligible stepchild whose parents lived in a state that did not permit them to marry prior to the commencement of Open Season will remain eligible to receive those benefits

for the entire calendar year, even if that state changes its marriage laws mid-year to authorize same-sex marriage or if the couple moves to a state that permits same-sex marriage.

Nothing in this regulation changes the rules that otherwise apply when an enrollee experiences a qualifying life event, including marriage. See OPM Benefits Administration Letter 13–203 (clarifying that same-sex couples who marry after June 26, 2013, have 60 days after the marriage to change their FEHB enrollment). OPM will issue guidance to clarify, among other things, how enrollees should inform their employing agency if a child they were covering under a FEHB Self and Family enrollment or a FEDVIP Self Plus One or Self and Family enrollment pursuant to this regulation, and for whom the value of the benefit was not tax preferred, becomes a stepchild who is the child of the enrollee's spouse, thus eliminating the need to impute the value of the benefit to their income.

Finally, with respect to the suggestion regarding civil unions, domestic partnership or other non-marital relationship, the fact that an employee may be in a state-created relationship with the child's other parent other than a marriage will not render the child eligible for coverage as a stepchild under the FEHB or FEDVIP. Therefore, requiring employees to enter into one of these other relationship statuses where available is not appropriate.

Comment: Several commenters requested that OPM extend coverage under the FEHB Program to same-sex spouses and/or domestic partners.

Response: As a result of the Supreme Court's decision striking down Section 3 of DOMA as unconstitutional, same-sex spouses of Federal employees and annuitants are now able to access benefits that are provided to spouses, including FEHB benefits. 5 U.S.C. 8901(5) defines "member of family" to mean the employee's "spouse" and certain children. Same-sex domestic partners are not encompassed within the statutory definition of member of family. OPM is therefore without authority to extend coverage to domestic partners.

Comment: One commenter argued that extending coverage to children of same-sex domestic partners is inequitable because it does not include coverage for children of opposite-sex domestic partners.

Response: Children of opposite-sex domestic partners were not included because opposite-sex partners may obtain coverage for their children through marriage, an option that is not yet universally available to same-sex

domestic partners. Same-sex domestic partners do currently have the option to marry in some states, and as discussed above, we have decided that where same-sex couples live in states that grant them equal marriage rights, they will not be eligible for the domestic partner benefits made available through this regulation. Finally, any enrollee seeking to cover a child of his or her same-sex domestic partner pursuant to this regulation must certify that he or she would marry his or her same-sex domestic partner were that option available in his or her state of residence.

Comment: One commenter argued that this regulation creates a legal anomaly and injustice by not providing health coverage for other children in non-marital households. The commenter gives the example of Federal employees who have assumed responsibility for the care of a grandchild or a niece where the child's natural parents are no longer living and able to care for these children as ineligible for coverage under the FEHB Program.

Response: OPM disagrees with the contention of the commenter that the children in the examples given are ineligible for coverage under the FEHB Program and therefore are treated unfairly by this rule. OPM has broadly defined the term "foster child" and allows Federal employees who have a relationship with a "foster child" to cover such a child under a Self and Family enrollment. The definition is designed to ensure that children who have parent-child relationships with Federal employees and annuitants, including non-traditional relationships, are eligible for coverage under the FEHB Program.

Comment: One commenter requested that OPM make changes impacting dependent eligibility so that FEHB Program insurance carriers may consider the cost of any such expansion during benefit and rate negotiations for the following year.

Response: We believe the addition of these family members will only have a negligible impact on costs for participating FEHB plans.

Comment: Multiple commenters recommended that OPM explicitly state that there are two interpretations under IRS regulations and guidance where coverage for a child of a same-sex domestic partner may be treated favorably for tax purposes: (1) If the employee is considered the child's stepparent under state law and (2) if the child is an employee's qualifying relative. In addition, several commenters requested that OPM provide clear and detailed guidance to

enrollees concerning the tax consequences of covering children of domestic partners. One commenter suggested that the process for an employee to establish favorable tax treatment for a child should not be more onerous than submitting an IRS W-4 form.

Response: OPM cannot provide individualized tax advice to enrollees, as we do not administer the Tax Code. However, OPM plans to issue general guidance on our Web site and to employing agencies and payroll offices informing enrollees of the documentation and information that the enrollee will be required to submit to the employing office in order to establish whether their child's coverage is eligible for favorable tax treatment, such as an annual certification. It will be incumbent on the enrollee to consult with appropriate professionals to determine whether, taking into account the enrollee's unique situation, FEHB and/or FEDVIP coverage provided to his or her stepchild meets applicable requirements for favorable tax treatment. If the enrollee does not establish that the stepchild qualifies for favorable tax treatment, then the fair market value of coverage provided to the child will be imputed to the enrollee and subject to applicable taxes. OPM guidance will also include the annual fair market value calculations for each FEHB and FEDVIP plan to aid enrollees in understanding the financial implications of covering a stepchild for whom preferential tax treatment has not been established. OPM believes that the specifics of the tax treatment of this coverage will be best communicated through annual guidance to employing agencies and enrollees as opposed to regulatory language because IRS guidance and policies may change from year to year. OPM plans to create a process that is minimally onerous for enrollees, while ensuring that agencies receive required information that is accurate.

Comment: A commenter expressed concern about the equity of imputing income for these benefits to Federal employees in accordance with current IRS regulations and guidance.

Response: OPM does not have the authority to make changes to current IRS regulations and guidance concerning the tax treatment of health insurance benefits; therefore this comment is outside the scope of these proposed regulations. FEHB and FEDVIP enrollees will be subject to the same State and Federal taxation rules as other employees receiving employer-sponsored benefits in the United States.

In the proposed rule, OPM also requested comments on how, in the case of the provision of FEHB coverage to the child of a same-sex domestic partner who does not qualify for favorable tax treatment under the Internal Revenue Code, the fair market value (FMV) of that coverage might be calculated for different types of plan coverage. Several commenters suggested methods for calculating the FMV.

Two commenters suggested using the methodology in Private Letter Ruling 9603011, where the FMV is the difference between the Self and Family premium and the Self Only premium for the selected plan, net of employee contributions. One commenter suggested that this is a preferable method because it is calculated from information that is publicly available and does not require complicated actuarial calculations on the part of the FEHB Program carrier. One commenter suggested that OPM may calculate FMV using the difference between the actuarial value of insurance for a single person and that of insurance for a couple or family. One commenter suggested that OPM use the actual premium cost the Federal Government would have paid if the child was not included in the policy, despite this method being opposed by the IRS in some private letter rulings. Several commenters suggested that OPM consider actuarial studies and data to ensure that an accurate FMV is determined.

OPM appreciates the input from commenters on how to determine FMV for coverage of children of domestic partners. OPM plans to provide, in the form of guidance to agencies, the FMV calculation for each FEHB plan for those who wish to cover children of domestic partners in a Self and Family enrollment (and for FEDVIP plans for those covering such children under a Self Plus One or Self and Family enrollment) where the children are not eligible for favorable tax treatment as a dependent. This calculation will be available to Federal agencies, payroll offices and enrollees annually, beginning for plan year 2014.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and

safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. I certify that this regulation will not have a significant economic impact because the regulation only adds a small additional group of children to the list of groups eligible for coverage under FEHB and FEDVIP.

List of Subjects

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 892

Administrative practice and procedure, Government employees, Health insurance, Taxes, Wages.

5 CFR Part 894

Administrative practice and procedure, Government employees, Health insurance, Taxes, Wages

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

Accordingly, OPM is amending 5 CFR chapter I as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

■ 2. Section 890.302 is revised to read as follows:

§ 890.302 Coverage of family members.

(a)(1) An enrollment for self and family includes all family members who are eligible to be covered by the enrollment. Except as provided in paragraph (a)(2) of this section, no employee, former employee, annuitant, child, or former spouse may enroll or be covered as a family member if he or she is already covered under another

person's self and family enrollment in the FEHB Program.

(2) *Dual enrollment.* (i) A dual enrollment exists when an individual is covered under more than one FEHB Program enrollment. Dual enrollments are prohibited except when an eligible individual would otherwise not have access to coverage and the dual enrollment has been authorized by the employing office.

(ii) *Exception.* An individual described in paragraph (a)(2)(i) of this section may enroll if he or she or his or her eligible family members would otherwise not have access to coverage, in which case the individual may enroll in his or her own right for self only or self and family coverage, as appropriate. However, an eligible individual is entitled to receive benefits under only one enrollment regardless of whether he or she qualifies as a family member under a spouse's or parent's enrollment. To ensure that no person receives benefits under more than one enrollment, each enrollee must promptly notify the insurance carrier as to which persons will be covered under his or her enrollment. These individuals are not covered under the other enrollment. Examples include but are not limited to:

(A) To protect the interests of married or legally separated Federal employees, annuitants and their children, an employee or annuitant may enroll in his or her own right in a self only or self and family enrollment, as appropriate, even though his or her spouse also has a self and family enrollment if the employee, annuitant or his or her children live apart from the spouse and would otherwise not have access to coverage due to a service area restriction and the spouse refuses to change health plans.

(B) When an employee who is under age 26 and covered under a parent's self and family enrollment acquires an eligible family member, the employee may elect to enroll for self and family coverage.

(iii) Children are entitled to receive benefits under only one enrollment regardless of whether the children qualify as family members under the enrollment of both parents or of a parent and a stepparent and regardless of whether the parents are married, unmarried, divorced, legally separated, or in a domestic partnership. To ensure that no person receives benefits under more than one enrollment, each enrollee must promptly notify the insurance carrier as to which family members will be covered under his or her enrollment. These individuals are not covered under the other enrollment.

(b)(1) A child under the age of 26, or a child of any age who is incapable of self-support because of a mental or physical disability which existed before age 26, is considered to be a family member eligible to be covered by the enrollment of an enrolled employee or annuitant or a former employee or child enrolled under § 890.1103 of this part if he or she is—

- (i) A child born within marriage;
- (ii) A recognized natural child;
- (iii) An adopted child;
- (iv) A stepchild; or
- (v) A foster child.

(2) *Meaning of stepchild.* Except as provided in paragraph (b)(5) of this section, for purposes of this part, the term “stepchild” refers to the child of an enrollee’s spouse or domestic partner and shall continue to refer to such child after the enrollee’s divorce from the spouse, termination of the domestic partnership, or death of the spouse or domestic partner, so long as the child continues to live with the enrollee in a regular parent-child relationship.

(3) *Meaning of domestic partner.* For purposes of this part, the term “domestic partner” is a person in a domestic partnership with an employee, annuitant, former employee or child enrolled under § 890.1103.

(4) *Meaning of domestic partnership.* For purposes of this part, the term “domestic partnership” is defined as a committed relationship between two adults of the same sex, in which the partners—

- (i) Are each other’s sole domestic partner and intend to remain so indefinitely;
- (ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);
- (iii) Are at least 18 years of age and mentally competent to consent to a contract;
- (iv) Share responsibility for a significant measure of each other’s financial obligations;
- (v) Are not married or joined in a civil union to anyone else;
- (vi) Are not a domestic partner of anyone else;
- (vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;
- (viii) Provide documentation demonstrating fulfillment of the requirements of paragraphs (b)(4)(i) through (vii) of this section as prescribed by OPM; and
- (ix) Certify that they understand that willful falsification of the

documentation described in paragraph (b)(4)(viii) of this section may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification and may constitute a criminal violation under 18 U.S.C. 1001.

(x) Certify that they would marry but for the failure of their state of residence to permit same-sex marriage.

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, the child of an enrollee and a domestic partner who otherwise meet the requirements of paragraphs (b)(4)(i) through (viii) of this section but live in a state that has authorized marriage by same-sex couples prior to the first day of Open Season, shall not be considered a stepchild who is the child of a domestic partner in the following plan year. The determination of whether a state’s marriage laws render a child ineligible for coverage as a stepchild who is the child of a domestic partner shall be made once annually, based on the law of the state where the same-sex couple lives on the last day before Open Season begins for the following plan year. A child’s eligibility for coverage as a stepchild who is the child of a domestic partner in a particular plan year shall not be affected by a mid-year change to a state’s marriage law or by the couple’s relocation to a different state. For mid-year enrollment changes involving the addition of a new stepchild, as defined by this regulation, outside of Open Season, the determination of whether a state’s marriage laws render the child ineligible for coverage shall be made at the time the employee notifies the employing office of his or her desire to cover the child.

(6) *Termination of domestic partnership.* An enrollee or his or her domestic partner must notify the employing office within thirty calendar days in the event that any of the conditions listed in paragraphs (b)(4)(i) through (vii) of this section are no longer met, in which case a domestic partnership will be deemed terminated.

(7) *Tax issues.* The fair market value of coverage provided to a stepchild who is the child of a domestic partner will be taxed in accordance with applicable tax laws unless the enrollee establishes that the stepchild qualifies for favorable tax treatment.

(c) *Child incapable of self-support.* When an individual’s enrollment for self and family includes a child who has become 26 years of age and is incapable of self-support, the employing office must require such enrollee to submit a physician’s certificate verifying the child’s disability. The certificate must—

(1) State that the child is incapable of self-support because of a physical or mental disability that existed before the child became 26 years of age and that can be expected to continue for more than 1 year;

(2) Include a statement of the name of the child, the nature of the disability, the period of time it has existed, and its probable future course and duration; and,

(3) Be signed by the physician and show the physician’s office address. The employing office must require the enrollee to submit the certificate on or before the date the child becomes 26 years of age. However, the employing office may accept otherwise satisfactory evidence of incapacity that is not timely filed.

(d) *Renewal of certificates of incapacity.* The employing office must require an enrollee who has submitted a certificate of incapacity to renew that certificate on the expiration of the minimum period of disability certified.

(e) *Determination of incapacity.* (1) Except as provided in paragraph (e)(2) of this section, the employing office shall make determinations of incapacity.

(2) Either the employing office or the carrier may make a determination of incapacity if a medical condition, as specified by OPM, exists that would cause a child to be incapable of self-support during adulthood.

■ 3. Section 890.804 is revised to read as follows:

§ 890.804 Coverage.

(a) *Type of enrollment.* A former spouse who meets the requirements of § 890.803 may elect coverage for self only or for self and family. A family enrollment covers only the former spouse and any child of both the former spouse and the employee, former employee or employee annuitant, provided such child is not otherwise covered by a health plan under this part. A child must be under age 26 or incapable of self-support because of a mental or physical disability existing before age 26. No person may be covered by two enrollments.

(b) A child is considered to be the child of the former spouse or the employee, former employee, or employee annuitant if he or she is—

- (1) A natural child; or
- (2) An adopted child.

(c) *Child incapable of self-support.* When a former spouse enrolls for a family enrollment which includes a child who has become 26 years of age and is incapable of self-support, the employing office shall determine such child’s eligibility in accordance with § 890.302(c), (d), and (e).

■ 4. In § 890.1102, revise the definition of “Qualifying event” to read as follows:

§ 890.1102 Definitions.

* * * * *

Qualifying event means any of the following events that qualify an individual for temporary continuation of coverage under subpart K of this part:

(1) A separation from Government service.

(2) A divorce or annulment.

(3) A change in circumstances that causes an individual to become ineligible to be considered a child who is a covered family member under this part.

■ 5. In § 890.1103, revise paragraphs (a) introductory text and (a)(2) to read as follows:

§ 890.1103 Eligibility.

(a) Except as provided by paragraph (b) of this section, individuals described by this section are eligible to elect temporary continuation of coverage under this subpart. Eligible individuals are as follows:

* * * * *

(2) Individuals whose coverage as children under the family enrollment of an employee, former employee, or annuitant ends because they cease meeting the requirements for being considered covered family members. For the purpose of this section, children who are enrolled under this part as survivors of deceased employees or annuitants are considered to be children under a family enrollment of an employee or annuitant at the time of the qualifying event.

* * * * *

■ 6. In § 890.1104, revise paragraphs (b)(2) and (3) to read as follows:

§ 890.1104 Notification by agency.

* * * * *

(b) * * *

(2) If the notice described in paragraph (b)(1) of this section is received by the employing office within 60 days after the date on which the child ceased meeting the requirements for being considered a covered family member, the employing office must notify the child of his or her rights under this subpart within 14 days after receiving the notice.

(3) This paragraph does not preclude the employing office from notifying the child of his or her rights based on oral or written notification by the child, another family member, or any other source that the child no longer meets the requirements for being considered a covered family member.

* * * * *

■ 7. In § 890.1107, revise paragraph (b) to read as follows:

§ 890.1107 Length of temporary continuation of coverage.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, in the case of individuals who are eligible for continued coverage under § 890.1103(a)(2), the temporary continuation of coverage ends on the date that is 36 months after the date the individual first ceases to meet the requirements for being considered a child who is a covered family member, unless it is terminated earlier under the provisions of § 890.1110.

(2) The temporary continuation of coverage ends on the date that is 36 months after the date of the separation from service on which the former employee's continuation of coverage is based, unless it is terminated earlier under the provisions of § 890.1110, in the case of individuals who—

(i) Are eligible for continued coverage under § 890.1103(a)(2); and

(ii) As of the day before ceasing to meet the requirements for being considered children who are covered family members, were covered family members of a former employee receiving continued coverage under this subpart; and

(iii) Cease meeting the requirements for being considered children who are covered family members before the end of the 18-month period specified in paragraph (a) of this section.

* * * * *

§ 890.1202 [Amended]

■ 8. In § 890.1202, remove the words “unmarried dependent” from the definition of “covered family members.”

§ 890.1203 [Amended]

■ 9. In § 890.1203, in paragraph (b), remove the word “dependent” each time it appears.

PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENTS OF HEALTH BENEFITS PREMIUMS PROGRAM

■ 10. The authority citation for part 892 continues to read as follows:

Authority: 5 U.S.C. 8913; 5 U.S.C. 1103(a)(7); 26 U.S.C. 125; Sec. 892.101 also issued under sec. 311 of Pub. L. 111–3, 123 Stat. 64.

■ 11. In § 892.101, the definition of “Dependent” and the introductory text and paragraph (1)(iii) of the definition of “Qualifying life event” are revised to read as follows:

§ 892.101 Definitions.

* * * * *

Dependent means a family member who is both eligible for coverage under the FEHB Program and either a dependent as defined in section 152 of the Internal Revenue Code or a child as defined in section 152(f)(1) of the Internal Revenue Code who is under age 27 as of the end of the employee's taxable year.

* * * * *

Qualifying life event means an event that may permit changes to your FEHB enrollment as well as changes to your premium conversion election as described in Treasury regulations at 26 CFR 1.125–4. For purposes of determining whether a qualifying life event has occurred under this part, a stepchild who is the child of an employee's domestic partner as defined in part 890 of this chapter shall be treated as though the child were a dependent within the meaning of 26 CFR 1.125–4 even if the child does not so qualify under such Treasury regulations. Such events include the following:

(1) * * *

(iii) Last dependent child loses coverage, for example, the child reaches age 26, disabled child becomes capable of self support, child acquires other coverage by court order; and * * *

■ 12. In § 892.102, add two sentences to the end of the section to read as follows:

§ 892.102 What is premium conversion and how does it work?

* * * There is one exception, however. If your FEHB enrollment covers a stepchild who is the child of a domestic partner as defined in part 890 of this chapter, and that stepchild does not qualify for favorable tax treatment under applicable tax laws, then the portion of the allotted amount described above that represents the employee's contribution toward the fair market value of FEHB coverage provided to the child will be separately imputed to the employee as income and subject to applicable taxes.

§ 892.208 [Amended]

■ 13. In § 892.208(b), the number “22” is removed and the number “26” is added in its place.

PART 894—FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE PROGRAM

■ 14. The authority citation for part 894 continues to read as follows:

Authority: 5 U.S.C. 8962; 5 U.S.C. 8992; subpart C also issued under sec. 1 of Pub. L. 110–279, 122 Stat. 2604.

■ 15. In § 894.101, the definition of “Acquiring an eligible child” is revised and definitions for “Domestic partner,” “Domestic partnership” and “Stepchild” are added in alphabetical order to read as follows:

§ 894.101 Definitions.

* * * * *

Acquiring an eligible child means one of the following:

- (1) Birth of a child;
- (2) Adoption of a child;
- (3) Acquisition of a foster child as described in § 890.101(a)(8) of this chapter;
- (4) Acquisition of a stepchild who lives with the enrollee in a regular parent-child relationship;
- (5) Establishment of a recognized natural child;
- (6) Residence change of the enrollee's stepchild or recognized natural child who moves in with the enrollee; and
- (7) An otherwise eligible child becoming unmarried due to divorce or annulment of marriage, or death.

* * * * *

Domestic partner means a person in a domestic partnership with an employee or annuitant.

Domestic partnership means a committed relationship between two adults of the same sex, in which the partners—

- (1) Are each other's sole domestic partner and intend to remain so indefinitely;
- (2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);
- (3) Are at least 18 years of age and mentally competent to consent to a contract;
- (4) Share responsibility for a significant measure of each other's financial obligations;
- (5) Are not married or joined in a civil union to anyone else;
- (6) Are not a domestic partner of anyone else;
- (7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;
- (8) Provide documentation demonstrating fulfillment of the requirements of paragraphs (1) through (7) of this definition as prescribed by OPM; and
- (9) Certify that they understand that willful falsification of the documentation described in paragraph (8) of this definition may lead to disciplinary action and the recovery of

the cost of benefits received related to such falsification and may constitute a criminal violation under 18 U.S.C. 1001.

(10) Certify that they would marry but for the failure of their state of residence to permit same-sex marriage.

(11) Termination of Domestic Partnership. An enrollee or his or her domestic partner must notify the employing office within thirty calendar days in the event that any of the conditions listed in paragraphs (1) through (7) of this definition are no longer met, in which case a domestic partnership will be deemed terminated.

* * * * *

Stepchild means:

- (1) Except as provided in paragraph (2) of this definition, the child of an enrollee's spouse or domestic partner and shall continue to refer to such child after the enrollee's divorce from the spouse, termination of the domestic partnership, or death of the spouse or domestic partner, so long as the child continues to live with the enrollee in a regular parent-child relationship.
- (2) The child of an enrollee and a domestic partner who otherwise meet the requirements of paragraphs (1) through (8), set forth in the definition of Domestic Partnership, but live in a state that has authorized marriage by same-sex couples prior to the first day of Open Season, shall not be considered a stepchild who is the child of a domestic partner in the following plan year. The determination of whether a state's marriage laws render a child ineligible for coverage as a stepchild who is the child of a domestic partner shall be made once annually, based on the law of the state where the same-sex couple lives on the last day before Open Season begins for enrollment for the following year. A child's eligibility for coverage as a stepchild who is the child of a domestic partner in a particular plan year shall not be affected by a mid-year change to a state's marriage law or by the couple's relocation to a different state. For midyear enrollment changes involving the addition of a new stepchild, as defined by this regulation, outside of Open Season, the determination of whether a state's marriage laws render the child ineligible for coverage shall be made at the time the employee notifies the employing office of his or her desire to cover the child.

* * * * *

■ 16. Add § 894.308 to subpart C to read as follows:

§ 894.308 How do I establish the dependency of my recognized natural child?

(a) Dependency is established for a recognized natural child who lives with the enrollee in a regular parent-child relationship, a recognized natural child for whom a judicial determination of support has been obtained, or a recognized natural child to whose support the enrollee makes regular and substantial contributions.

(b) The following are examples of proof of regular and substantial support. More than one of the following proofs may be required to show support of a recognized natural child who does not live with the enrollee in a regular parent-child relationship and for whom a judicial determination of support has not been obtained:

- (1) Evidence of eligibility as a dependent child for benefits under other State or Federal programs;
- (2) Proof of inclusion of the child as a dependent on the enrollee's income tax returns;
- (3) Canceled checks, money orders, or receipts for periodic payments from the enrollee for or on behalf of the child.
- (4) Evidence of goods or services which show regular and substantial contributions of considerable value;
- (5) Any other evidence which OPM shall find to be sufficient proof of support or of paternity or maternity.

■ 17. In § 894.403, add a sentence to the end of paragraph (a) to read as follows:

§ 894.403 Are FEDVIP premiums paid on a pre-tax basis?

(a) * * * However, if your enrollment covers a stepchild who is the child of a domestic partner as defined in § 894.101, and that stepchild does not qualify for favorable tax treatment under applicable tax laws, the allotted amount of premium that represents the fair market value of the FEDVIP coverage provided to the stepchild will be separately imputed to the employee as income and subject to applicable taxes.

* * * * *

[FR Doc. 2013–25734 Filed 10–29–13; 8:45 am]

BILLING CODE 6325–63–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133–AD96

Liquidity and Contingency Funding Plans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule to require federally insured credit unions (FICUs) with less than \$50 million in assets to maintain a basic written policy that provides a credit union board-approved framework for managing liquidity and a list of contingent liquidity sources that can be employed under adverse circumstances. The rule requires FICUs with assets of \$50 million or more to have a contingency funding plan that clearly sets out strategies for addressing liquidity shortfalls in emergency situations. Finally, the rule requires FICUs with assets of \$250 million or more to have access to a backup federal liquidity source for emergency situations.

DATES: This rule is effective March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, Office of General Counsel, (703) 518-6540; or J. Owen Cole, Jr., Director, Division of Capital and Credit Markets, Office of Examination and Insurance, (703) 518-6620.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
 - A. Why is NCUA adopting this final rule?
 - B. What did the 2012 proposed rule say?
 - C. How did the commenters respond to the 2012 proposed rule?
- II. Final Rule
 - A. In general
 - B. How does the final rule affect FICUs with less than \$50 million in assets?
 - C. How does the final rule affect FICUs with \$50 million or more in assets?
 - D. What additional requirements apply to FICUs with \$250 million or more in assets?
 - E. How are a FICU's assets calculated for purposes of the final rule?
 - F. Request for Comment Regarding Basel Liquidity
- III. Regulatory Procedures

I. Background

A. Why is NCUA adopting this final rule?

The recent financial crisis demonstrated the importance of good liquidity risk management to the safety and soundness of financial institutions. Many institutions experienced significant financial stress because they did not manage their liquidity in a prudent manner. In some cases, these institutions had difficulty meeting their obligations as they became due because sources of funding became severely restricted. In the financial crisis, even institutions that were healthy used emergency federal liquidity facilities when funding costs became

prohibitively high. At the time, the borrowing authority of NCUA's Central Liquidity Facility (CLF) was more than \$40 billion, and it was able to play a significant role in making liquidity available to credit unions. Because of the 2012 closure of U.S. Central Credit Union and the redemption of most of its CLF stock, however, the CLF's borrowing authority has been reduced to just over \$2 billion.

These events followed several years of ample liquidity. The rapid reversal in market conditions and availability of liquidity during the crisis illustrated how quickly liquidity can evaporate. This illiquidity can last for an extended period, leading to an institution's inability to meet its financial obligations and possibly its insolvency. Many of the liquidity-related difficulties experienced by financial institutions were due to lapses in basic principles of liquidity risk management. This rule will strengthen FICU liquidity risk management, which is crucial to ensuring the credit union system's resiliency during periods of financial market stress.

B. What did the 2012 proposed rule say?

The 2012 proposed liquidity rule required FICUs with less than \$10 million in assets to maintain a written liquidity policy, including a list of contingent liquidity sources.¹ It also required FICUs with assets of \$10 million or more to have a contingency funding plan (CFP) that clearly sets out strategies for addressing liquidity shortfalls in emergency situations. Finally, it required FICUs with assets of \$100 million or more to have access to either the CLF or the Federal Reserve Discount Window (Discount Window). The proposed rule also requested comment on the costs and benefits of applying Basel III liquidity measures to FICUs with assets over \$500 million.²

C. How did the commenters respond to the 2012 proposed rule?

NCUA received 45 comments on the proposed rule. More than half of the commenters urged that the rule not go forward, stating that NCUA had not justified a need for a liquidity regulation and that the guidance provided by the 2010 Interagency Policy Statement on Funding and Liquidity Risk Management (Policy Statement)³ was sufficient to control liquidity risk.

¹ 77 FR 44503 (July 30, 2012).

² See Basel Committee on Banking Supervision, "Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring," Dec. 2010, available at <http://www.bis.org/publ/bcbis188.htm>.

³ 75 FR 13656 (Mar. 22, 2010).

Twenty commenters stated that any emergency liquidity regulation should include the option of membership in a Federal Home Loan Bank (FHLB), and ten stated that it should include the option of holding marketable securities.

A number of commenters praised the three-tiered approach, although 12 suggested that the lower threshold should be raised to match NCUA's then-proposed amendment to the definition of "small entity."⁴ Seven commenters suggested that the higher threshold should be raised. Six stated that asset size is a poor basis on which to determine whether liquidity requirements should be imposed.

Several commenters seemed confused about the proposed requirement that FICUs with assets of \$100 million or more have access to the CLF or Discount Window. Their comments suggested they believed the requirement meant that these larger credit unions would be prohibited from establishing other sources of liquidity. This is incorrect. As discussed in greater detail below, the Board encourages all FICUs to have multiple sources of liquidity.

Twenty-five commenters objected to the CLF's structure, specifically the required stock investment and the CLF's inability to guarantee same-day funding. The Board notes that the stock investment is required under the Federal Credit Union Act.⁵ The Board also notes that the CLF cannot guarantee same-day funding to credit unions because it borrows the funds it lends from the Federal Financing Bank under terms prescribed by the U.S. Treasury.

Eighteen commenters either opposed applying Basel III liquidity measures and monitoring tools to FICUs with assets over \$500 million or suggested that NCUA proceed very slowly in considering such application.

II. Final Rule

A. In General

After careful consideration of the comments, the Board has concluded that a liquidity rule is necessary to ensure that FICUs remain resilient in times of economic stress. It, therefore, is adopting as final a modified version of the 2012 proposed rule. As discussed in greater detail below, this final rule addresses concerns raised by the commenters. Accordingly, the Board is adding a new § 741.12 to part 741, titled "Liquidity and Contingency Funding Plans." The Board believes that FICUs, relying on the guidance provided in the Policy Statement, generally have

⁴ See 77 FR 59139 (Sept. 26, 2012).

⁵ See generally 12 U.S.C. 1795-1795k.

managed liquidity risk adequately. However, the financial crisis highlighted the importance for FICUs to have strong policies and programs explicitly addressing the credit union's liquidity risk management. The Board believes it is critical to expand the credit union industry's borrowing capacity after the liquidation of U.S. Central Credit Union.

The Board is retaining the tiered approach of the proposed rule and is continuing to base the tiers on asset size. The Board believes that, while there are exceptions, larger credit unions generally present greater exposure to the NCUSIF. The Board is, however, raising the triggering thresholds from those in the proposed rule.

Since the proposed rule was issued, the Board revised the definition of "small entity" from a credit union with less than \$10 million in assets to one with less than \$50 million in assets.⁶ The Board also amended two NCUA regulations that grant relief based on an asset threshold, raising that threshold from \$10 million to \$50 million.⁷ For regulatory relief and regulatory consistency, the Board is raising the lowest threshold in this rule—requiring a basic written policy—to include credit unions with less than \$50 million in assets.

In response to comments, and to reduce regulatory burden, the Board is raising the highest threshold—requiring established access to a federal liquidity provider—from \$100 million to \$250 million. While the Board encourages FICUs with assets between \$100 million and \$250 million to have this access, the Board is not requiring it at this time.

B. How does the final rule affect FICUs with less than \$50 million in assets?

The Board continues to believe that it is essential for every FICU, regardless of size and complexity, to have a management process for identifying, measuring, monitoring, and controlling liquidity risk that is commensurate with its respective needs. FICUs with less than \$50 million in assets present relatively limited liquidity concerns, as they tend to have lower loan-to-share ratios, shorter duration assets, and higher amounts of balance sheet liquidity than larger credit unions. Accordingly, § 741.12(a) of the final rule requires these smaller FICUs to maintain a basic written policy that provides a credit union board-approved framework for managing liquidity and a list of contingent liquidity sources that

can be employed under adverse circumstances. Such a policy establishes liquidity measures and associated benchmarks, a reporting requirement to keep the board apprised of the institution's liquidity position, and a contingent source, or sources, of funding, such as a corporate credit union or correspondent bank.

C. How does the final rule affect FICUs with \$50 million or more in assets?

Section 741.12(b) requires any FICU with assets of at least \$50 million to have a fully developed, written CFP that clearly sets out strategies for addressing liquidity shortfalls in emergency situations. In addition to the policy items required for smaller FICUs, a fully developed CFP also provides for evaluation of adverse liquidity scenarios, outlines specific actions to be taken and specific sources of liquidity in emergency liquidity events, and provides for periodic testing of contingent liquidity sources. Section 741.12(d) of the final rule details all of the requirements of a CFP. The Board is imposing greater requirements on these larger FICUs because of the critical importance of a well-developed CFP to the viability of these institutions and, ultimately, the safety of the NCUSIF.

D. What additional requirements apply to FICUs with \$250 million or more in assets?

In addition to the requirement to have a written CFP, § 741.12(c) of the final rule requires any FICU with assets of \$250 million or more to ensure it has immediate, established access to either the CLF or the Discount Window. These larger credit unions have a greater degree of interconnectedness with other market entities. When they experience unexpected or severe liquidity circumstances, they are more likely to adversely affect the credit union system, public perception, and the NCUSIF.

The Board determined not to include FHLB membership as a federal contingency source for purposes of meeting the requirements of this rule. As discussed in the preamble to the proposed rule, FHLBs can be valuable contingency funding sources. However, while government sponsored, FHLBs are not federal facilities and are not obligated to meet emergency liquidity demands in the same way that the CLF and Discount Window are designed to do. The Board also declines to allow large FICUs to meet the requirements of the rule by holding a portfolio of marketable securities. While it is prudent for every FICU to have a cushion of highly liquid assets on its

balance sheet, these assets have proven to be insufficient in a crisis.

The Board emphasizes that all FICUs should have access to multiple sources of funding, from both their own balance sheets and through market funding sources. In requiring the largest FICUs to have established access to the CLF or the Discount Window, the Board is not suggesting that these sources are sufficient by themselves. FICUs with assets of \$250 million or more should have three distinct sources of liquidity readily available.

First, all FICUs should maintain a balance sheet cushion of highly liquid assets as a basic element of liquidity risk management. It is essential for FICUs of all sizes to hold an adequate safeguard of cash and cash equivalents (such as short-term deposits and Treasury securities) on the balance sheet continuously. A balance-sheet cushion affords an institution time to avoid service disruptions and enter external funding arrangements if necessary.

A second element of liquidity management is borrowing from market counterparties, such as corporate credit unions, correspondent banks, FHLBs, and repurchase agreement counterparties. The ability to borrow from market sources requires having unencumbered assets that can be readily pledged against a loan. Larger FICUs with greater potential funding needs should have multiple stable borrowing sources and a clear understanding of which assets can be pledged.

The third element of protection is access to a federal emergency liquidity provider: The CLF or the Discount Window. These providers exist to provide backup liquidity in circumstances where on-balance sheet liquidity and market sources prove inadequate. Like the market funding sources, the CLF and Discount Window are both collateral-based lending facilities. The Board believes that, to protect the NCUSIF, it is essential for FICUs with assets of at least \$250 million to have this third element of liquidity in place.

The rule provides that a FICU may demonstrate access by becoming a regular member of the CLF, becoming a member of the CLF through an agent, or establishing borrowing access through the Discount Window. As discussed in the preamble to the proposed rule, corporate credit unions may facilitate natural person credit unions becoming regular CLF members by, for example, assisting with applications of credit, serving as a collateral custodian and

⁶ 78 FR 4032 (Jan. 18, 2013).

⁷ *Id.*

administrator, and assisting with credit reporting requirements.⁸ The Discount Window serves all depository institutions that meet eligibility requirements established by Federal Reserve regulations.⁹ To gain access to the Discount Window, the Federal Reserve requires specific agreements to be executed. Information regarding these agreements, as set forth in Operating Circular No. 10, and

Discount Window operation can be found at www.frbdiscountwindow.org. The Board notes that, while not required in the final rule, a FICU may wish to both become a member of the CLF and establish borrowing access at the Discount Window. The combination of the CLF and the Discount Window would provide the greatest protection in the event of a sudden and sustained liquidity emergency. The Discount

Window is designed to handle sudden emergencies that require same-day access to liquidity. The CLF, on the other hand, is designed to handle sustained emergencies that require federal backup liquidity for several months. The following table shows some of the similarities and differences between the CLF and the Discount Window.

	Federal reserve discount window	Central Liquidity Facility (CLF)
Similarities	Both the Discount Window and the CLF function as safety valves to relieve liquidity pressure on individual depository institutions and to stabilize broader liquidity systems.	
	Both are fully secured collateral-based lenders.	
	Both met emergency liquidity needs for individual institutions and for entire systems during the latest financial crisis.	
Differences	The Fed is able to advance same-day funds to qualifying credit unions (subject to collateral requirements).	CLF funding may take 1–10 business days depending on the requested dollar amount (also subject to collateral requirements).
	The Fed's overnight loans may be renewable, but any series of rollovers is expected to be brief in duration.	The CLF makes loans up to 90 days, and these 90-day loans may be renewed for an additional term under certain circumstances.

With established access to both, in a liquidity crisis, when balance sheet and market sources are not enough, a FICU would have the ability to immediately obtain federal backup liquidity through the Discount Window. If the FICU's emergency liquidity needs persist for more than a few days, the FICU would have the flexibility to maintain federal backup liquidity through the CLF for several months at a time. The amount of liquidity advances available from either facility is a function of the eligible collateral available to pledge. A FICU with \$250 million or more in assets will be in compliance with this final rule if, by the effective date of March 31, 2014, it has submitted either a completed application for access to the CLF or the necessary lending agreements and corporate resolutions to obtain credit from the Discount Window.

E. How are a FICU's assets calculated for purposes of the final rule?

Credit unions' assets can grow and shrink rapidly, and a particular FICU's assets may cross the \$50 million or \$250 million threshold repeatedly over a short period of time. In light of this fluctuation, § 741.12(e) of the final rule provides that a FICU is subject to the requirements of a higher asset category when two consecutive Call Reports

show its assets to be in that higher category. A FICU will then have 120 days from the effective date of that second Call Report to meet the higher triggered requirements. F. Request for Comment Regarding Basel Liquidity In the proposed rule, the Board requested comment on whether certain Basel III liquidity measures and monitoring tools should be incorporated into NCUA's supervisory expectations for the largest FICUs. In response to comments, the Board has determined not to take up the Basel measures at this time.

III. Regulatory Procedures

a. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities (those under \$50 million in assets). The final rule requires small FICUs to establish a basic liquidity policy, which is a best practice for every depository institution. Because the policy requires only modest effort, it will not have a significant economic impact on a substantial number of small credit unions.

a regular member of the CLF, it must subscribe to CLF stock. 12 U.S.C. 1795c(a); 12 CFR 725.3. ⁹ Any depository institution holding liabilities potentially subject to reserve requirements under Federal Reserve regulations can establish access to the Discount Window. Such "reserveable

b. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.¹⁰ For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or disclosure requirement, each referred to as an information collection. NCUA has determined the requirement to maintain a basic written liquidity policy is an information collection requirement. NCUA estimates that all 4,444 credit unions under \$50 million in total assets may have to formalize their liquidity risk policies and that this task should take approximately 8 hours per credit union. The expected burden of the requirement is: 4,444 FICUs × 8 hours = 35,552 hours.

NCUA has further determined the requirement to establish and document a CFP constitutes an information collection requirement but that, because of the Policy Statement, approximately 447 out of 2,237 (or 20%) of FICUs with assets of at least \$50 million will already have established such a plan. NCUA estimates that 1,790 FICUs will have to develop a written CFP and that the task should take a FICU approximately 24 hours. The expected

liabilities" include transaction accounts and nonpersonal time deposits. For most credit unions, share draft accounts would be the principal reserveable liability. See 12 CFR part 204. ¹⁰ 44 U.S.C. 3507(d); 5 CFR part 1320.

⁸ A corporate acting as a CLF correspondent would not be an agent member of the CLF within the meaning of 12 U.S.C. 1795c(b) or 12 CFR 725.4, as it would not subscribe to CLF stock for its members. For a natural person credit union to be

burden of the requirement is: 1,790 FICUs \times 24 hours = 42,960 hours.

NCUA has also determined the requirement to either become a member of the CLF or establish borrowing access through the Discount Window creates a new information collection requirement. There are 771 FICUs with assets of at least \$250 million, 374 of which are not currently regular members of CLF and/or do not report having established Discount Window access. NCUA estimates that it should take a FICU approximately 4 hours to complete the necessary paperwork to establish either CLF or Discount Window access. The expected burden of the requirement is: 374 FICUs \times 4 hours = 1,496 hours.

While the regulation provides the option of establishing CLF membership through an agent, NCUA estimates that no corporates will opt to be agent members at this time and, therefore, no FICUs will establish membership in this manner.

As required by the PRA, NCUA submitted a copy of this final rule to OMB for its review and approval.

c. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This final rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

d. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

e. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in

instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act.¹¹ NCUA does not believe this final rule is a “major rule” within the meaning of the relevant sections of SBREFA and has submitted the rule to the Office of Management and Budget for its determination in that regard.

List of Subjects in 12 CFR Part 741

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 24, 2013.

Gerard Poliquin,

Secretary of the Board.

For the reasons stated above, the National Credit Union Administration amends 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

■ 1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 2. Add § 741.12 to subpart A to read as follows:

§ 741.12 Liquidity and Contingency Funding Plans.

(a) Any credit union insured pursuant to Title II of the Act that has assets of less than \$50 million must maintain a basic written policy that provides a credit union board-approved framework for managing liquidity and a list of contingent liquidity sources that can be employed under adverse circumstances.

(b) Any credit union insured pursuant to Title II of the Act that has assets of \$50 million or more must establish and document a contingency funding plan (CFP) that meets the requirements of paragraph (d) of this section.

(c) In addition to the requirement specified in paragraph (b) of this section to establish and maintain a CFP, any credit union insured pursuant to Title II of the Act that has assets of \$250 million or more must establish and document access to at least one contingent federal liquidity source for use in times of financial emergency and distressed economic circumstances. These credit unions must conduct advance planning and periodic testing to ensure that contingent funding sources are readily available when needed. A credit union subject to this paragraph may demonstrate access to a contingent federal liquidity source by:

(1) Maintaining regular membership in the Central Liquidity Facility

(Facility), as described in part 725 of this chapter;

(2) Maintaining membership in the Facility through an Agent, as described in part 725 of this chapter; or

(3) Establishing borrowing access at the Federal Reserve Discount Window by filing the necessary lending agreements and corporate resolutions to obtain credit from a Federal Reserve Bank pursuant to 12 CFR part 201.

(d) Contingency Funding Plan: A credit union must have a written CFP commensurate with its complexity, risk profile, and scope of operations that sets out strategies for addressing liquidity shortfalls in emergency situations. The CFP may be a separate policy or may be incorporated into an existing policy such as an asset/liability policy, a funds management policy, or a business continuity policy. The CFP must address, at a minimum, the following:

(1) The sufficiency of the institution's liquidity sources to meet normal operating requirements as well as contingent events;

(2) The identification of contingent liquidity sources;

(3) Policies to manage a range of stress environments, identification of some possible stress events, and identification of likely liquidity responses to such events;

(4) Lines of responsibility within the institution to respond to liquidity events;

(5) Management processes that include clear implementation and escalation procedures for liquidity events; and

(6) The frequency that the institution will test and update the plan.

(e) A credit union is subject to the requirements of paragraphs (b) or (c) of this section when two consecutive Call Reports show its assets to be at least \$50 million or \$250 million, respectively. A FICU then has 120 days from the effective date of that second Call Report to meet the greater requirements.

[FR Doc. 2013–25714 Filed 10–29–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 741 and 748

RIN 3313–AE25

Filing Financial and Other Reports

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule to amend its

¹¹ 5 U.S.C. 551.

regulations regarding filing financial, statistical, and other reports and credit union profiles by requiring all federally insured credit unions (FICUs) to file this information electronically using NCUA's information management system or other electronic means specified by NCUA. Under the current rule, FICUs are required to file this information online only if they have the capacity to do so.

DATES: This rule is effective January 1, 2014.

FOR FURTHER INFORMATION CONTACT:

Sarah Chung, Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, Virginia 22314-3428, telephone (703) 518-1178, or Mark Vaughan, Director, Division of Analytics and Surveillance, Office of Examination and Insurance, at 1775 Duke Street, Alexandria, Virginia 22314-3428, telephone (703) 518-6622.

SUPPLEMENTARY INFORMATION:

- I. Background and Proposal
- II. Summary of Public Comments and Final Rule
- III. Regulatory Procedures

I. Background and Proposal

A. Background

The Federal Credit Union Act (Act) provides NCUA with broad authority to require FICUs, including corporate credit unions, to submit financial data and other information as required by the Board.¹ The Act directs each FICU to make reports of condition to the Board on dates selected by the Board.² The Board has broad discretion to set the conditions and information requirements for such reports.³ More specifically, NCUA requires FICUs to submit financial reports, reports of officials, credit union profiles, and other reports.⁴

Section 741.6(a) of NCUA's regulations requires FICUs to file financial, statistical, and other reports, including call reports. Section 748.1 of NCUA's regulations requires the president or managing official of each FICU to certify compliance with a variety of requirements in its credit union profile.

Under NCUA's current regulations, a FICU must use NCUA's information management system, or other electronic means specified by NCUA, to submit its reportable data online, unless it is unable to do so.⁵ In this case, a FICU

must file written reports in accordance with NCUA instructions.

B. July 2013 Proposal

Executive Order 13579 provides that independent agencies, including NCUA, should consider if they can modify, streamline, expand, or repeal existing rules to make their programs more effective and less burdensome. NCUA seeks to reduce operating costs and promote environmentally responsible practices. NCUA estimates it costs the agency \$125 per filer per quarter to process manual filings of call reports alone. In July 2013, NCUA proposed to require all FICUs to submit call reports and other data electronically, and to update their credit union profiles online to reduce the expense of printing and mailing paper forms and other processing costs.⁶ Under the proposed rule, filing manually would no longer be an option.

Additionally, NCUA would increase efficiency, enhance accuracy of data, and provide a secure access portal that is the sole means for FICUs to submit, edit, and view data that NCUA collects. This permits FICUs to submit data securely to NCUA from any computer with Internet access. To assist FICUs making this transition, NCUA already provides instructions on how to report online and has posted a "frequently asked questions" section on NCUA's Web site.

II. Summary of Public Comments and Final Rule

NCUA received 12 comments on the proposed rule. The comments were from 3 trade associations representing credit unions, 6 state credit union leagues (some of these leagues represent more than one state), a state-chartered, federally insured credit union, a federal credit union, and a state regulators association.

Six commenters generally supported the proposed rule. Some commenters believed the proposal would lead to increased efficiencies and enhance the accuracy and availability of data. Others maintained that NCUA appropriately considered the burden on filers and made hardware and training available to help small credit unions.

Six commenters generally did not support the proposed rule. Some commenters expressed concerns about the hardships that electronic filing may have on the smallest credit unions who have limited staffing and electronic resources. Others did not believe the

proposed rule would sufficiently reduce costs and increase efficiency for NCUA, and found that manual filings were not a significant burden on NCUA's resources.

Commenters also made other recommendations. Some of these recommendations include having NCUA: 1) Change the required filing date for call reports to be 30 days after the end of the quarter; 2) encourage manual filers to move toward electronic filing within a reasonable amount of time, the duration of which should depend on the particular credit union; and 3) continue to work with small credit unions, through its Office of Small Credit Union Initiatives (OSCU), to help move them toward electronic filing.

The Board has considered all public comments carefully. While NCUA appreciates the commenters' concerns for small credit unions, NCUA believes that electronic filing will save time and resources, as well as increase the efficiency in processing all reports. NCUA believes that once manual filers embrace online filing, they will find it is quicker and easier than manual filing, and it will reduce their administrative burden. NCUA will continue to help small credit unions transition to electronic filing and anticipates that OSCUI will continue to participate in this effort.

Accordingly, the Board is adopting the July 2013 proposed rule as final without any changes. The final rule will be effective on January 1, 2014, which means it is applicable to the fourth quarter 2013 call report data, which are due to NCUA later in January 2014.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.⁷ For purposes of this analysis, NCUA considers small credit unions to be those having under \$50 million in assets.⁸ This final rule requires a very small number of manual filers to transition to electronic filing. This final rule would affect relatively few FICUs and the associated cost is minimal. Accordingly, NCUA certifies this final rule will not have a significant economic impact on small entities.

⁷ 5 U.S.C. 603(a).

⁸ Interpretive Ruling and Policy Statement 03-2, 68 FR 31949 (May 29, 2003), as amended by Interpretive Ruling and Policy Statement 13-1, 78 FR 4032 (Jan. 18, 2013).

¹ 12 U.S.C. 1756, 1766, 1781, and 1782.

² *Id.*

³ *Id.*

⁴ 12 CFR 741.6 and 748.1.

⁵ *Id.* Currently, corporate credit unions use an electronic system for submitting data online

different from the system used by natural person FICUs.

⁶ 78 FR 46850 (Aug. 2, 2013).

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.⁹ For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This final rule requires the same information previously required in a different format, which NCUA believes will require the same or a lesser amount of time to produce. This final rule will not create new paperwork burdens or modify any existing paperwork burdens.¹⁰

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996¹¹ (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final

rule as defined by Section 551 of the Administrative Procedure Act.¹² NCUA does not believe this final rule is a “major rule” within the meaning of the relevant sections of SBREFA. This final rule requires a very small number of manual filers to file financial, statistical, and other reports electronically, which is minimally intrusive and economically negligible. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

List of Subjects*12 CFR Part 741*

Credit, Credit unions, Reporting and recordkeeping requirements, Share insurance.

12 CFR Part 748

Credit unions, Reporting and recordkeeping requirements, Security measures.

By the National Credit Union Administration Board on October 24, 2013.

Gerard Poliquin,

Secretary of the Board.

For the reasons stated above, NCUA amends 12 CFR parts 741 and 748 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

- 1. The authority for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

- 2. In § 741.6, revise paragraph (a) introductory text to read as follows:

§ 741.6 Financial and statistical and other reports.

(a) Upon written notice from the NCUA Board, Regional Director, Director of the Office of Examination and Insurance, or Director of the Office of National Examinations and Supervision, insured credit unions must file financial and other reports in accordance with the instructions in the notice. Insured credit unions must use NCUA’s information management system, or other electronic means specified by NCUA, to submit their data online.

* * * * *

PART 748—SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK SECRECY ACT COMPLIANCE

- 3. The authority for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801–6809; 31 U.S.C. 5311 and 5318.

- 4. In § 748.1, revise paragraph (a) to read as follows:

§ 748.1 Filing of reports.

(a) The president or managing official of each federally insured credit union must certify compliance with the requirements of this part in its Credit Union Profile annually through NCUA’s online information management system.

* * * * *

[FR Doc. 2013–25716 Filed 10–29–13; 8:45 am]

BILLING CODE 7535–01–P

FEDERAL TRADE COMMISSION**16 CFR Part 4****Freedom of Information Act (FOIA); Miscellaneous Rules Redelelegation of Authority To Determine Appeals Under the FOIA**

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule amendments.

SUMMARY: The Commission is revising its rules to authorize the General Counsel to redelegate his or her authority to determine appeals related to the Freedom of Information Act (“FOIA”). The Commission is adopting these changes in order to improve and expedite the process for responding to such appeals. The changes will affect internal procedures only and are not intended to influence the outcomes of appeals made under the rules. The Commission is also adding a new provision that explicitly provides the right to appeal fee waiver determinations under the FOIA.

DATES: These amendments are effective October 30, 2013.

FOR FURTHER INFORMATION CONTACT: W. Ashley Gum, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW., Washington, DC 20580, 202–326–3006.

SUPPLEMENTARY INFORMATION: Under the Commission’s current rule governing FOIA appeals (16 CFR 4.11(a)), appeals from initial denials of requests for extensions, and initial denials of requests for information under the FOIA, are addressed to the General Counsel. 16 CFR 4.11(a)(3)(i)(A)(4). Reorganization Plan No. 4 of 1961, 75 Stat. 837, authorizes the Commission to delegate any of its functions. It imposes no restrictions on the Commission’s capacity to authorize a Commission official to designate others to carry out delegated functions (i.e., to redelegate). The Commission notes that generally

⁹ 44 U.S.C. 3507(d); 5 CFR part 1320.

¹⁰ The information collection in Call Reports and Credit Union Profiles for natural person credit unions (NCUA Form 5300) is currently approved under OMB Control Number 3133–0004. For corporate credit unions (NCUA Form 5310), the information collection in Call Reports is pending under OMB Control Number 3133–0067.

¹¹ Public Law 104–121, 110 Stat. 857 (1996).

¹² 5 U.S.C. 551.

FOIA appeals are time-consuming because they cannot be decided generically. Each appeal can involve numerous documents that must be analyzed individually on the basis of the standards provided in the FOIA. The Commission believes that this redelegation authority would be in the public interest because it would enable the administrative review process to be carried out more expeditiously. The Commission is therefore revising paragraph (a)(3)(iii)(B) of the rule to authorize the General Counsel to redelegate any FOIA appeal function to a Deputy General Counsel because it is primarily a legal review to assure compliance with existing law and to assure implementation of existing Commission policy. Decisions of a Deputy General Counsel on appeal shall constitute final agency action. In unusual or difficult cases, such as those that present novel policy issues, the General Counsel, in his/her discretion, may make the determination himself or refer an appeal to the Commission for determination.

As noted above, the Commission is also adding a new Rule 4.11(a)(3)(i)(A)(3), which is currently reserved in the CFR, to provide FOIA requesters with the explicit right to appeal fee waiver and reduction determinations and to include a clear deadline for filing such appeals.

The Commission believes that the proposed rule amendments do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals, who are not "small entities" within the meaning of that Act, 5 U.S.C. 601(6), and, in any event, the economic impact of the rule changes on all requesters is expected to be minimal, if any. Moreover, these proposed rule amendments are matters of agency practice and procedure that are exempt from notice-and-comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), which also exempts the proposed amendments from the analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2). Likewise, the amendments do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520. The Commission nonetheless solicited comments regarding the new Rule

4.11(a)(3)(i)(A)(3),¹ but that proposed addition did not elicit any comments.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

- 1. The authority citation for Part 4 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

- 2. Amend § 4.11 by adding paragraph (a)(3)(i)(A)(3) and revising paragraph (a)(3)(iii)(B), to read as follows:

§ 4.11. Disclosure requests.

(a) * * *

(3) * * *

(i) * * *

(A) * * *

(3) If an initial request for a fee waiver or reduction is denied, the requester may, within 30 days of the date of the letter notifying the requester of that decision, appeal such denial to the General Counsel. In unusual circumstances, the time to appeal may be extended by the General Counsel or his or her designee.

* * * * *

(iii) * * *

(B) The General Counsel may designate a Deputy General Counsel to make any determination assigned to the General Counsel by paragraph (a) of this section. The General Counsel or the official designated by the General Counsel to make the determination shall be deemed solely responsible for the denial of all appeals, except where an appeal is denied by the Commission. In such instances, the Commission shall be deemed solely responsible for the denial.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–25709 Filed 10–29–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. [USCG–2013–0900]]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AICW), Albemarle and Chesapeake Canal, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the SR 170/Centerville Turnpike Bridge, at AICW mile 15.2, across Albemarle and Chesapeake Canal, at Chesapeake, VA. The deviation is necessary to facilitate structural repairs to the superstructure of the SR 170/Centerville Turnpike Bridge. This temporary deviation will allow the drawbridge to change the operating schedule on specific dates and times.

DATES: This deviation is effective from 7 a.m. on November 2, 2013 until 7 p.m. November 10, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0900] is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Jim Rousseau, Bridge Administration Branch Fifth District, Coast Guard, telephone (757) 398–6557, email James.L.Rousseau2@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The City of Chesapeake, who owns and operates this swing bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.997(i), to facilitate structural repairs.

Under the regular operating schedule, the S.R. 170/Centerville Turnpike

¹ See 78 FR 13570, 13573 (Feb. 28, 2013).

Bridge, Albemarle and Chesapeake Canal mile 15.2, at Chesapeake, VA shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials; From 6:30 a.m. to 8:30 a.m., and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays the draw need not open for the passage of recreational or commercial vessels that do not qualify; Need not open for commercial cargo vessels, including tug, and tug with tows, unless 2 hours advance notice has been given to the S.R. 170/Centerville Turnpike Bridge at (757) 547-3632; and from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw need only be opened on the hour and half hour. If any vessel is approaching the bridge and cannot reach the draw exactly on the hour or half hour, the draw tender may delay the opening ten minutes past the hour or half hour for the passage of the approaching vessel and any other vessels that are waiting to pass. It shall open on signal at all other times.

The S.R. 170/Centerville Turnpike Bridge has a vertical clearance in the open and closed position of unlimited and 4 feet, above mean high water, respectively.

Under this temporary deviation, the drawbridge will be operated under the following schedule to facilitate superstructure repairs, beginning at 7 a.m., on Saturday, November 2, 2013 and ending at 7 p.m., on Sunday, November 3, 2013, the drawbridge will open on signal every three hours on the following schedule: on Saturday, November 2nd at 7 a.m., 10 a.m., 1 p.m., 4 p.m., 7 p.m., 10 p.m. and on Sunday, November 3rd at 1 a.m., 4 a.m., 7 a.m., 10 a.m., 1 p.m., 4 p.m. and 7 p.m.; will open on signal for hazardous material vessels with a one-hour advance notice by calling (757-547-3631); and will open for an emergency as soon as safely possible. In case of inclement weather, the alternate dates will be rescheduled to weekend of November 9 and November 10, 2013. The bridge will operate under its current operating schedule at all other times. The Coast Guard has carefully reviewed bridge opening logs and coordinated the restrictions with commercial and recreational waterway users.

Vessels able to pass under the bridge in the closed position may do so at anytime and are advised to proceed with caution. The drawbridge will be able to open for emergencies as soon as safely possible. There is no immediate alternate route for vessels transiting this section of the AICW but vessels may pass before and after the closure each day. The Coast Guard will also inform

additional waterway users through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 16, 2013.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2013-25624 Filed 10-29-13; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0828]

Drawbridge Operation Regulation; Upper Mississippi River, Hannibal, MO

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Hannibal Railroad Drawbridge across the Upper Mississippi River, mile 309.9, at Hannibal, Missouri. The deviation is necessary to allow the bridge owner time to replace critical control components that are essential to the continued safe operation of the drawbridge. The work is scheduled in the winter, when the impact on navigation is minimal, instead of scheduling the work at other times in the year, when river traffic is prevalent. This deviation allows the bridge to remain in the closed-to-navigation position for 39 days.

DATES: This deviation is effective from 7 a.m., January 7, 2014 to 5 p.m., February 14, 2014.

ADDRESSES: The docket for this deviation, [USCG-2013-0828], is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of

Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone (314) 269-2378, email Eric.Washburn@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Railroad requested a temporary deviation for the Hannibal Railroad Drawbridge, mile 309.9, at Hannibal, Missouri across the Upper Mississippi River. It has a vertical clearance of 21.1 feet above normal pool in the closed position. The Hannibal Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

The deviation period is from 7 a.m., January 7, 2014 to 5 p.m., February 14, 2014 when the draw span will remain in the closed-to-navigation position. During this time the bridge owner will replace critical control components that are essential to the continued safe operation of the drawbridge. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass this section of the Upper Mississippi River. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 18 (Mile 410.5 UMR) and Lock No. 22 (Mile 301.2 UMR) till 11 a.m., March 4, 2014 will preclude any significant navigation demands for the drawspan opening.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 24, 2013.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2013-25635 Filed 10-29-13; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281-0369-02]

RIN 0648-XC928

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reopening of the Commercial Harvest of Gulf King Mackerel in Western Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reopening.

SUMMARY: NMFS reopens the 2013–2014 commercial sector for king mackerel in the western zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ). NMFS previously projected that the commercial annual catch limit (ACL) (equal to the commercial quota) for king mackerel in the western zone of the Gulf EEZ would be reached by September 20, 2013, and closed the western zone of the Gulf to commercial king mackerel fishing in the EEZ at noon, local time, September 20, 2013, until 12:01 a.m., local time, on July 1, 2014. However, updated landings estimates indicate the commercial ACL (commercial quota) for king mackerel in the western zone of the Gulf EEZ has not been reached at this time. Therefore, NMFS is reopening the western zone of the Gulf to commercial king mackerel fishing in the EEZ at 12:01 a.m., local time, on November 1, 2013, until 12:01 a.m., local time, on November 3, 2013. The intended effect of this temporary rule is to maximize harvest benefits for the commercial sector for Gulf king mackerel in the western zone.

DATES: The reopening is effective 12:01 a.m., local time, November 1, 2013, until 12:01 a.m., local time, on November 3, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727-824-5305, email: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery

Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS projected that the commercial annual catch limit (ACL) (equal to the commercial quota) for king mackerel in the western zone of the Gulf EEZ would be reached on September 20, 2013, and published a temporary rule to close the western zone of the Gulf to commercial king mackerel fishing in the EEZ (78 FR 58248). However, since that closure, the Science and Research Director has received additional landings data and has determined that the commercial ACL (commercial quota) was not harvested prior to September 20, 2013. Therefore, in accordance with 50 CFR 622.8(c), NMFS is reopening the western zone of the Gulf to commercial king mackerel fishing in the EEZ at 12:01 a.m., local time, on November 1, 2013, until 12:01 a.m., local time, on November 3, 2013.

The Gulf group king mackerel western zone begins at the United States/Mexico border (near Brownsville, Texas) and continues to the boundary between the eastern and western zones at 87°31.1' W. long., which is a line directly south from the Alabama/Florida boundary.

After the commercial sector closes, no person aboard a vessel for which a commercial permit for king mackerel has been issued, except for a person aboard a charter vessel or headboat, may fish for or retain Gulf group king mackerel in the EEZ in the closed zone (50 CFR 622.384(e)(1)). During the closure, a person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2), provided the vessel is operating as a charter vessel or headboat (50 CFR 622.384(e)(2)). A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zone, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade

in king mackerel from the closed zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(3)).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8(c) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because NMFS previously determined the commercial ACL (commercial quota) for king mackerel in the western zone of the Gulf EEZ would be reached by September 20, 2013, and therefore, closed the commercial sector for king mackerel in the western zone of the Gulf EEZ at noon, local time, on September 20, 2013. However, updated landings estimates indicate the commercial ACL (commercial quota) for king mackerel in the western zone of the Gulf EEZ has not been reached at this time, and therefore additional harvest is available in order to achieve optimum yield. All that remains is to notify the public that additional harvest is available under the established commercial ACL (commercial quota) and, therefore, the commercial sector for king mackerel in the western zone of the Gulf EEZ will reopen.

Prior notice and an opportunity to comment is contrary to the public interest because king mackerel is a migratory species, making the harvest of the commercial ACL (commercial quota) for the western zone of the Gulf EEZ time-sensitive. Reopening quickly will likely make additional king mackerel available to consumers and result in revenue increases to commercial vessels.

For the aforementioned reasons, the AA also finds good cause to waive the

30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 24, 2013.

Kelly Denit,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013-25695 Filed 10-25-13; 11:15 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130219149-3397-02]

RIN 0648-BC97

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Emergency Rule Extension, Georges Bank Yellowtail Flounder and White Hake Catch Limits and GOM Cod Carryover Revisions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary final rule; emergency action extended.

SUMMARY: This rule extends, pursuant to NMFS's emergency authority in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Georges Bank (GB) yellowtail flounder and white hake specifications for fishing year (FY) 2013 and the GOM cod sector carryover reduction that were published on May 3, 2013, which were implemented as emergency actions concurrently with the Framework Adjustment (FW) 50 final rule under the Northeast (NE) Multispecies Fishery Management Plan (FMP). These measures were scheduled to expire on October 30, 2013. Specifically, this temporary rule maintains the current Acceptable Biological Catch (ABC) and Annual Catch Limit (ACL) for GB yellowtail flounder and white hake, and the 1.85-percent allowable carryover of unused FY 2012 GOM cod Annual Catch Entitlement (ACE) for sectors for an additional 183 days, i.e., through the end of FY 2013 (May 1, 2013, through April 30, 2014). The need for the emergency measures is unchanged, which is to establish FY 2013 catch limits for GB yellowtail flounder and white hake based upon the best available scientific information, and to reduce available carryover of unused FY 2012 GOM cod ACE for sectors. The

intended effect of the emergency measures is to prevent overfishing on GB yellowtail flounder and GOM cod, and to incorporate the best available science into the management of white hake.

DATES: This rule is effective October 30, 2013, through April 30, 2014.

The expiration date of the emergency measures for GB yellowtail flounder and white hake specifications, and GOM cod carryover in the preamble of the final rule published May 3, 2013, (78 FR 26172) is extended through April 30, 2014.

ADDRESSES: Copies of Framework 50, associated emergency rules, and other measures, the environmental assessment (EA), its Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Act (FRFA) analysis prepared by the New England Fishery Management Council (Council) and NMFS are available from John K. Bullard, Regional Administrator, NMFS Northeast Regional Office (NERO), 55 Great Republic Drive, Gloucester, MA 01930. The FRFA analysis consists of the FRFA, public comments and responses, and the summary of impacts and alternatives contained in the final rule for Framework 50, Associated Emergency Rules, and Other Measures. The EA/RIR/FRFA is also accessible via the Internet at: <http://www.nero.noaa.gov/sfd/sfdmulti.html>.

FOR FURTHER INFORMATION CONTACT: Melissa Hooper, Fishery Policy Analyst, (978) 281-9166, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

This temporary final rule extends the revised GB yellowtail flounder and white hake catch limits and GOM cod carryover implemented through emergency authority in the Magnuson-Stevens Act, as published in the Framework 50 final rule on May 3, 2013, to maintain those measures through the end of FY 2013 (April 30, 2014). The May 3, 2013, final rule (78 FR 26172) included detailed information on the background, reasons, and justification to revise through emergency action, the GB yellowtail flounder and white hake catch limits from those originally proposed in the Framework 50 proposed rule (78 FR 19368; March 29, 2013) and from the standard 10-percent allowable carryover for GOM cod. That information is not repeated here.

Section 305(c) of the Magnuson-Stevens Act allows for the extension of an emergency action, which is otherwise effective for up to 180 days, for up to another 186 days, provided

that certain criteria are met: (1) The public has had an opportunity to comment on the emergency regulation, and (2) in the case of a Council recommendation for emergency action, the Council is actively developing an FMP amendment or regulations to address the emergency or overfishing on a permanent basis. NMFS accepted public comment on the emergency measures in the final rule through June 17, 2013, but no comments were submitted. Because these extensions do not change the measures already in place, we are not accepting additional public comment on their extension. NMFS has determined that all the necessary criteria have been met and, therefore, is extending these emergency measures.

1. FY 2013 GB Yellowtail Flounder ABC

The emergency specifications extended through this final rule are the revised GB yellowtail flounder catch limits for FY 2013, as follows: A U.S. Overfishing Limit (OFL) of 882 mt; a U.S. ABC of 215 mt; a total ACL of 208.5 mt; a groundfish sub-ACL of 116.8 mt; a scallop fishery sub-ACL of 83.4 mt; a small-mesh fisheries sub-ACL of 4.0 mt; and an Other ACL sub-component of 4.3 mt. The initial emergency action modified GB yellowtail flounder catch limits from those originally proposed based on a determination that the Framework 50 proposed catch limits were not based upon the Council's Scientific and Statistical Committee (SSC) recommendation, were not consistent with the best available scientific information, and had a high likelihood of resulting in overfishing.

Although the Framework 50 final rule contained preliminary information regarding the more specific components of the groundfish sub-ACL (the division of the groundfish sub-ACL between sectors and the common pool and the Incidental Catch Total Allowable Catches for common pool vessels), it did not implement the final specification of these components (and this rule does not need to address those aspects of the FMP). The components of the GB yellowtail flounder groundfish sub-ACL are specified in the final rule that adjusted the FY 2013 groundfish sub-ACL components for all stocks (78 FR 34928; June 11, 2013).

2. FY 2013 White Hake ABC

The emergency specifications extended through this final rule are the revised white hake catch limits for FY 2013, as follows: A U.S. OFL of 5,462 mt; a U.S. ABC of 4,177 mt; a total ACL of 3,974 mt; a groundfish sub-ACL of 3,849 mt; a state waters sub-component

of 42 mt; and an Other ACL sub-component of 84 mt. NMFS modified the white hake catch limits from those proposed and approved through Framework 50 at the request of the Council, because more recent assessment information became available during rulemaking that indicated an increase was warranted. The emergency action was intended to incorporate the best available scientific information into the management of white hake and to help mitigate some of the anticipated impacts of reductions to catch limits for other stocks. The specific emergency action to increase the white hake catch limits was at the request of the Council (Council motion April 24, 2013), because the Council could not act quickly enough to revise the catch limits on its own for FY 2013. The Council is currently developing Framework 51, which would address the emergency on a permanent basis by specifying white hake ABCs based on this recent assessment for FY 2014–2015.

As explained under Item 1, the Framework 50 final rule contained preliminary information regarding the more specific components of the groundfish sub-ACL and the final distribution of these components are as specified in the June 11, 2013, final adjustment rule.

3. FY 2013 Sector Carryover for GOM Cod

This temporary rule extends the emergency reduction to the amount of unused GOM cod ACE that sectors were allowed to carryover from FY 2012 to FY 2013 to 1.85 percent. NMFS determined, based on analysis, that if sectors carried over the full 10 percent of their unused FY 2013 ACE for GOM cod, it would increase the likelihood of overfishing on this stock. Thus, through the Framework 50 final rule, NMFS reduced the amount of allowable GOM cod carryover to 1.85 percent of the sectors' FY 2012 ACE to ensure the total potential catch (ACL + carryover) did not exceed the FY 2013 GOM cod OFL.

As described above, no comments were received on these measures.

Classification

The Regional Administrator, Northeast Region, NMFS, has determined that the emergency measures extended by this temporary rule are necessary for the conservation and management of the NE multispecies fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

The Framework 50 final rule, including the emergency measures that

this temporary rule extends, was determined to be significant for purposes of E.O. 12866.

The Framework 50 final rule including the emergency measures that this temporary rule extends does not contain policies with Federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

Because the original emergency rule provided for public comment on these measures, it is not necessary to waive prior notice and comment procedures. Under 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries finds good cause to waive the 30-day delayed effectiveness of this action. Because the extension of these emergency measures merely continues regulations already in place, it would be contrary to the public interest to allow the expiration of the revised GB yellowtail flounder and white hake catch limits and reduced GOM cod carryover, or a gap in effectiveness of these measures after October 29, 2013. As described more fully in the original May 3, 2013, emergency action (78 FR 26172), the reasons justifying promulgation of the rule on an emergency basis make a delay in effectiveness contrary to the public interest. The revised catch limits and carryover are necessary to prevent overfishing on GB yellowtail flounder and GOM cod. If the revised GB yellowtail flounder ABC were allowed to expire, it would revert to the default ABC specified in Framework 47, which NMFS has determined would be likely to result in overfishing and severe harm to the stock. Similarly, if the allowable GOM cod carryover were to revert to the standard 10 percent of FY 2012 ACE, total potential catch could exceed the OFL by 12 percent. This would represent a serious conservation and management threat to the GOM cod stock. Furthermore, a gap in the revised GB yellowtail flounder catch limits and GOM cod carryover due to a delay of this temporary rule would severely disrupt the fishery. The revised white hake catch limits were intended to incorporate the most recent, best available scientific information into the management of this stock. Increasing this catch limit was also intended to mitigate the negative economic impacts to the fishing industry from substantial reductions in catch limits for other groundfish stocks that were necessary to prevent overfishing. If the revised white hake catch limits were to expire, they would default to the lower catch limits approved in Framework 50, which were based on outdated assessment information. This could cause some fishery components to temporarily

exceed their allocations. For some components of the fishery, this would trigger inseason accountability measures, temporarily closing productive fishing grounds to some vessels and resulting in foregone yield and economic losses that may negate any mitigating economic benefits of the original emergency action. Thus, even a temporary gap in effectiveness could have substantial economic impacts to the fishing industry and severely disrupt operations. For all of these reasons, a 30-day delay in the effectiveness of this rule is impracticable and contrary to the public interest.

A FRFA was prepared for the Framework 50 final rule and associated emergency measures as required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, and is not repeated here. The FRFA analyzed the effects of the emergency measures for the duration of the year in anticipation of this extension. A copy of the full analysis is available from NMFS (see **ADDRESSES**).

The EA prepared for Framework 50 analyzed the impacts of the emergency specifications for the duration of a full year. Therefore, the impacts of this emergency action extension have been analyzed, and are within the scope of the Finding of No Significant Impact.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 23, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 648.87 [Amended]

■ 2. Section 648.87 is amended by suspending paragraph (b)(1)(i)(C).

[FR Doc. 2013–25720 Filed 10–29–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679****[Docket No. 121018563–3148–02]****RIN 0648–XC946****Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian district (CAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2013 total allowable catch (TAC) of Atka mackerel in this area allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 25, 2013, through 2400 hrs, A.l.t., December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 TAC of Atka mackerel, in the CAI, allocated to vessels participating in the BSAI trawl limited access fishery was established as a directed fishing allowance of 664 metric tons by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the CAI by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable

amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Atka mackerel directed fishery in the CAI for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 24, 2013. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 25, 2013.

Kelly Denit,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–25671 Filed 10–25–13; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679****[Docket No. 121018563–3148–02]****RIN 0648–XC944****Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea and Aleutian Islands Management Area**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the

Central Aleutian district (CAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2013 total allowable catch (TAC) of Pacific ocean perch in this area allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 25, 2013, through 2400 hrs, A.l.t., December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 TAC of Pacific ocean perch, in the CAI, allocated to vessels participating in the BSAI trawl limited access fishery was established as a directed fishing allowance of 616 metric tons by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the CAI by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Pacific ocean perch directed fishery in the CAI for

vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 24, 2013. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 25, 2013.

Kelly Denit,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013-25704 Filed 10-25-13; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563-3148-02]

RIN 0648-XC943

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian district (EAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2013 total allowable catch (TAC) of Pacific ocean perch in this area allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 25, 2013, through 2400 hrs, A.l.t., December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea

and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 TAC of Pacific ocean perch, in the EAI, allocated to vessels participating in the BSAI trawl limited access fishery was established as a directed fishing allowance of 854 metric tons by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the EAI by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Pacific ocean perch directed fishery in the EAI for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 24, 2013. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 25, 2013.

Kelly Denit,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013-25718 Filed 10-25-13; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563-3148-02]

RIN 0648-XC945

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Bering Sea subarea and Eastern Aleutian district (BS/EAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2013 total allowable catch (TAC) of Atka mackerel in this area allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 25, 2013, through 2400 hrs, A.l.t., December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 TAC of Atka mackerel, in the BS/EAI, allocated to vessels participating in the BSAI trawl limited access fishery was established as a directed fishing allowance of 1,402 metric tons by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the BS/EAI by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the

requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Atka mackerel directed fishery in the BS/EAI for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 24, 2013. The

AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 25, 2013.

Kelly Denit,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–25721 Filed 10–25–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 78, No. 210

Wednesday, October 30, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2013-0924; Directorate Identifier 2013-CE-032-AD]

RIN 2120-AA64

Airworthiness Directives; B-N Group Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for B-N Group Ltd. Models BN-2, BN-2A, BN-2A-2, BN-2A-3, BN-2A-6, BN-2A-8, BN-2A-9, BN-2A-20, BN-2A-21, BN-2A-26, BN-2A-27, BN-2B-20, BN-2B-21, BN-2B-26, BN-2B-27, BN2A MK. III, BN2A MK. III-2, and BN2A MK. III-3 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as damage of the cable sliding end assembly and installation of the incorrect end fitting on engine control cable assemblies. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by December 16, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.

Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Britten-Norman Aircraft Limited, Commodore House, Mountbatten Business Centre, Millbrook Road East, Southampton SO15 1HY, United Kingdom; telephone: +44 20 3371 4000; fax: +44 20 3371 4001; email: info@bnaircraft.com; Internet: <http://www.britten-norman.com/customer-support/>. You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4138; fax: (816) 329-4090; email: taylor.martin@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2013-0924; Directorate Identifier 2013-CE-032-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this

proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2013-0215, dated September 16, 2013 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Britten-Norman Aircraft Limited has been made aware of two occurrences where a failure of engine control cable assemblies has caused engine control difficulties. In both reported cases, the cable sliding end assemblies were in poor condition and in both cases, an incorrect end-fitting was installed which may have contributed to the failures.

This condition, if not detected and corrected, could result in reduced engine control, possibly resulting in reduced control of the aeroplane.

To address this potential unsafe condition, Britten-Norman Aircraft have issued Service Bulletin (SB) 334 to provide inspection instructions.

For the reason described above, this AD requires a one-time inspection and functional test of the engine control cables and, depending on findings, replacement of the cables.

You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2013-0924.

Relevant Service Information

Britten-Norman Aircraft Limited has issued Service Bulletin No. SB 334, Issue 1, dated August 30, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the

MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 101 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$8,585, or \$85 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours and require parts costing \$4,800 (4 per airplane), for a cost of \$5,650 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

B-N Group Ltd.: Docket No. FAA-2013-0924; Directorate Identifier 2013-CE-032-AD.

(a) Comments Due Date

We must receive comments by December 16, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to B-N Group Ltd. Models BN-2, BN-2A, BN-2A-2, BN-2A-3, BN-2A-6, BN-2A-8, BN-2A-9, BN-2A-20, BN-2A-21, BN-2A-26, BN-2A-27, BN-2B-20, BN-2B-21, BN-2B-26, BN-2B-27, BN2A MK. III, BN2A MK. III-2, and BN2A MK. III-3 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 76: Engine Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as damage of the cable sliding end assembly and installation of the incorrect end fitting on engine control cable assemblies. We are issuing this AD to detect and correct damage of the cable sliding end assembly (cracking, distortion, corrosion) and incorrect end fittings on the engine control assemblies, which could lead to reduced engine control with consequent loss of control.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within the next 6 months after the effective date of this AD, do a one-time inspection of the engine control cable assemblies, part number (P/N) 137835, P/N 172449-1, P/N 17250, and P/N 172451, and surrounding areas for damage (cracking, distortion, corrosion) and correct cable end-fitting and to assure the wire locking is intact following section 6 ACTION of Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 1, dated August 30, 2013.

(2) If no discrepancies are found during the inspection required in paragraph (f)(1) of this AD, inspect the control linkages for proper adjustment and, before further flight, make any necessary changes following section 6 ACTION of Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 1, dated August 30, 2013.

(3) If any discrepancies are found during the inspection required in paragraph (f)(1) of this AD and/or the control linkages cannot be properly adjusted as specified in paragraph (f)(2) of this AD, before further flight, replace the engine control cable assembly with a serviceable unit following section 6 ACTION of Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 1, dated August 30, 2013.

(4) After the effective date of this AD, do not install on any airplane engine control cable assemblies, part number (P/N) 137835, P/N 172449-1, P/N 17250, and P/N 172451, unless they are new or have been inspected as required in paragraphs (f)(1) and (f)(2) of this AD and found free of any discrepancies and have proper adjustment.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4138; fax: (816) 329-4090; email: taylor.martin@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2013-0215, dated September 16, 2013, for related information. You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2013-

0924. For service information related to this AD, contact Britten-Norman Aircraft Limited, Commodore House, Mountbatten Business Centre, Millbrook Road East, Southampton SO15 1HY, United Kingdom; telephone: +44 20 3371 4000; fax: +44 20 3371 4001; email: info@bnaircraft.com; Internet: <http://www.britten-norman.com/customer-support/>. You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Issued in Kansas City, Missouri, on October 23, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-25703 Filed 10-29-13; 8:45 am]

BILLING CODE 4910-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R04-OAR-2013-0563; FRL-9902-18-Region 4]

Approval and Promulgation of Implementation Plans; North Carolina: Non-Interference Demonstration for Removal of Federal Low-Reid Vapor Pressure Requirement for the Raleigh-Durham-Chapel Hill Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State of North Carolina's March 27, 2013, State Implementation Plan (SIP) revision to the State's approved Maintenance Plan for the Raleigh-Durham-Chapel Hill (Triangle) 1997 8-hour Ozone Maintenance Area. Specifically, North Carolina's revision, including updated modeling, shows that the Triangle Area would continue to maintain the 1997 8-hour ozone standard if the currently applicable Federal Reid Vapor Pressure (RVP) standard for gasoline from 7.8 pounds per square inch (psi) were modified to 9.0 psi for three portions (Wake and Durham Counties, and a portion of Granville County) of the "Triangle Area" of North Carolina during the high-ozone season. The State has included a technical demonstration with the revision to demonstrate that a less-stringent RVP standard of 9.0 psi in these areas would not interfere with continued maintenance of the 1997 8-hour Ozone National Ambient Air Quality Standards (NAAQS) or any other applicable standard. Approval of

this SIP revision is a prerequisite for EPA's consideration of an amendment to the regulations to remove the aforementioned portions of the Triangle Area from the list of areas that are currently subject to the Federal 7.8 psi RVP requirements. In addition, EPA is also proposing to approve changes to the motor vehicle emission budgets (MVEBs) used in the 1997 8-hour ozone maintenance plan for the Triangle Area. The use of new models and the relaxation of the RVP requirement has resulted in a revised safety margin which North Carolina is reallocating among the MVEBs associated the Maintenance Plan. EPA has preliminarily determined that North Carolina's March 27, 2013, SIP revision with respect to the changes to the modeling and associated technical demonstration associated with the State's request for the removal of the Federal RVP requirements, and with respect to the updated MVEBs, is consistent with the applicable provisions of the Clean Air Act (CAA or Act). Should EPA decide to remove the subject portions of the Triangle Area from those areas subject to the 7.8 psi Federal RVP requirements, such action will occur in a subsequent rulemaking.

DATES: Written comments must be received on or before November 29, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R04-OAR-2013-0563 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email*: R4-RDS@epa.gov.
3. *Fax*: (404) 562-9019.
4. *Mail*: EPA-R04-OAR-2013-0563, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960.
5. *Hand Delivery or Courier*: Ms. Lynora Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2013-0563. EPA's policy is that all comments

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Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT:

Sean Lakeman of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman may be reached by phone at (404) 562–9043, or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. What is being proposed?
- II. What is the background of the Triangle Area?
- III. What is the history of the gasoline volatility requirement?
- IV. What are the section 110(l) requirements?
- V. What is EPA's analysis of North Carolina's submittal?
- VI. Mobile Source Inventories and Motor Vehicle Emission Budgets Update
- VII. Proposed Action
- VIII. Statutory and Executive Order Reviews

I. What is being proposed?

The Triangle Area in North Carolina is currently designated attainment for the 1997 8-hour ozone NAAQS. The Area was redesignated from nonattainment of the 1997 8-hour ozone NAAQS on December 26, 2007. *See* 72 FR 72948. This rulemaking proposes to approve a revision to the 1997 8-hour ozone Maintenance Plan for the Triangle Area submitted by the North Carolina Department of Environment and Natural Resources (NC DENR). Specifically, EPA is proposing to approve changes to the maintenance plan, including updated modeling, that show that the Triangle Area can continue to maintain the 1997 ozone standard without reliance on emission reductions based upon the use of gasoline with an RVP of 7.8 psi in any of the Triangle Area counties during the high ozone season—June 1 through September 15.¹ EPA is also proposing to conclude that the new modeling demonstrates that the area would continue to attain the 1997 8-hour ozone standard with the use of gasoline with an RVP of 9.0 psi throughout the Triangle Area during the high ozone season. Consistent with section 110(l) of the Act, EPA also proposes to conclude that the use of gasoline with an RVP of 9.0 psi throughout the Maintenance Plan Areas during the high ozone season

would not interfere with other applicable requirements.

The new modeling conducted by North Carolina to account for the proposed relaxation of the applicable RVP standard in a portion of the Triangle Area also results in changes to the safety margin associated with the maintenance plan.² As such, the North Carolina revision includes a reallocation of the safety margin among the NOx MVEBs for the Triangle Area. EPA is also proposing approval of this revision.

This preamble is hereafter organized into five parts. Section II provides the background of the Triangle Area designation status with respect to the various Ozone NAAQS. Section III describes the applicable history of federal gasoline regulation. Section IV provides the Agency's policy regarding relaxation of the volatility standards. Section V provides EPA's analysis of the information submitted by North Carolina to support a relaxation of the more stringent volatility standard in the Triangle Area. Finally, Section VI describes the changes to the MVEBs associated with Maintenance Plan for the Triangle Area and provides EPA's analysis regarding the proposed revision.

II. What is the background of the Triangle Area?

In 1991, the Triangle Area was designated as a moderate nonattainment area pursuant to the 1-hour ozone NAAQS. *See* 56 FR 56694 (November 6, 1991). Under the 1-hour ozone NAAQS, the Triangle nonattainment area was composed of Durham and Wake Counties, and the Dutchville Township portion of Granville County. Among the requirements applicable to nonattainment areas for the 1-hour ozone NAAQS was the requirement to meet certain volatility standards (known as Reid Vapor Pressure or RVP) for gasoline sold commercially. *See* 55 FR 23658 (June 11, 1990). As discussed in greater detail below, as part of the RVP requirements associated with its nonattainment designation, gasoline sold in the Triangle 1-hour nonattainment area could not exceed 7.8 psi RVP during the high-ozone season months.

Following implementation of the 7.8 psi RVP requirement in the Triangle Area, on April 18, 1994, the Area was redesignated to attainment for the 1-hour ozone standard, based on 1989–1992 ambient air quality monitoring data. *See* 59 FR 18300. North Carolina's

redesignation request for the 1-hour ozone Triangle Area did not, however, include a request for the Area to be removed from the list of areas subject to the 7.8 psi RVP standard. As such, the 7.8 RVP requirement remained in place for Durham and Wake Counties, and the Dutchville Township portion of Granville County when the Triangle Area was designated nonattainment for the 1997 8-hour ozone NAAQS. Under the 1997 8-hour ozone NAAQS, the Triangle Area was expanded from Durham and Wake Counties, and the Dutchville Township portion of Granville County, to also include Franklin, Johnston, Orange, and Person Counties, the remainder of Granville County and Baldwin, Center, New Hope and Williams Townships in Chatham County. *See* 69 FR 23857. In 2007, the Triangle Area was redesignated to attainment for the 1997 8-hour ozone NAAQS. *See* 72 FR 72948, December 26, 2007. The Triangle Area was later designated as attainment for the 2008 8-hour ozone NAAQS. *See* 77 FR 30088, May 21, 2012.

III. What is the history of the gasoline volatility requirement?

On August 19, 1987 (52 FR 31274), EPA determined that gasoline nationwide had become increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline, referred to as volatile organic compounds (VOC), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function (thereby aggravating asthma or other respiratory conditions), increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Under section 211(c) of CAA, EPA promulgated regulations on March 22, 1989 (54 FR 11868), that set maximum limits for the RVP of gasoline sold during the high ozone season. These regulations constituted Phase I of a two-phase nationwide program, which was designed to reduce the volatility of commercial gasoline during the high ozone season. On June 11, 1990 (55 FR 23658), EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the State, the month, and the area's initial ozone attainment

¹ As discussed further below, a separate rulemaking is required for relaxation of the current requirement to use gasoline with an RVP of 7.8 psi in the Triangle Area. While EPA evaluates the approvability of North Carolina's revision to the maintenance plan pursuant to section 110(l), the decision regarding removal of Federal RVP requirements pursuant to section 211(h) in the Triangle Area is made at the discretion of the Administrator.

² In addition to a less stringent RVP standard, the new modeling also utilizes updated models for on-road and off-road mobile emission sources.

designation with respect to the 1-hour ozone NAAQS during the high ozone season).

The 1990 CAA Amendments established a new section, 211(h), to address fuel volatility. Section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. Section 211(h) prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that we may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), EPA modified the Phase II volatility regulations to be consistent with section 211(h) of the CAA. The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658).

As stated in the preamble to the Phase II volatility controls and reiterated in the proposed change to the volatility standards published in 1991, EPA will rely on states to initiate changes to EPA's volatility program that they believe will enhance local air quality and/or increase the economic efficiency of the program within the limits of CAA section 211(h).³ In those rulemakings, EPA explained that the Governor of a State may petition EPA to set a volatility standard less stringent than 7.8 psi for some month or months in a nonattainment area. The petition must demonstrate such a change is appropriate because of a particular local economic impact and that sufficient alternative programs are available to achieve attainment and maintenance of the 1-hour ozone NAAQS. A current listing of the RVP requirements for states can be found on EPA's Web site at: <http://www.epa.gov/otaq/fuels/gasolinefuels/volatility/standards.htm>.

As explained in the December 12, 1991 (56 FR 64704), Phase II rulemaking, EPA believes that relaxation of an applicable RVP standard in a nonattainment area is best accomplished in conjunction with the redesignation process. In order for an ozone nonattainment area to be redesignated as an attainment area, section 107(d)(3) of the Act requires the

state to make a showing, pursuant to section 175A of the Act, that the area is capable of maintaining attainment for the ozone NAAQS for ten years after redesignation. Depending on the area's circumstances, this maintenance plan will either demonstrate that the area is capable of maintaining attainment for ten years without the more stringent volatility standard or that the more stringent volatility standard may be necessary for the area to maintain its attainment with the ozone NAAQS. Therefore, in the context of a request for redesignation, EPA will not relax the volatility standard unless the state requests a relaxation and the maintenance plan demonstrates, to the satisfaction of EPA, that the area will maintain attainment for ten years without the need for the more stringent volatility standard. As noted above, however, North Carolina did not request relaxation of the applicable 7.8 psi RVP standard when the Triangle Area was redesignated to attainment for the either the 1-hour or the 1997 8-hour ozone NAAQS. Rather, North Carolina is now seeking to relax the 7.8 psi RVP standard after the Triangle Area has been redesignated to attainment for the 1997 8-hour ozone NAAQS. Accordingly, the original modeling and maintenance demonstration supporting the 1997 8-hour ozone maintenance plan must be revised to reflect continued attainment under the relaxed 9.0 psi RVP standard that the State has requested.

IV. What are the section 110(l) requirements?

Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) (as defined in section 171), or any other applicable requirement of the Act. EPA's criterion for determining the approvability of North Carolina's March 27, 2013, SIP revision is whether this requested action complies with section 110(l) of the CAA. Because the modeling associated with the current maintenance plan for North Carolina is premised in part upon the 7.8 psi RVP requirements, a request to revise the maintenance plan modeling to no longer rely on the 7.8 psi RVP requirement is subject to the requirements of CAA section 110(l). Therefore, the State must demonstrate that this revision will not interfere with the attainment or maintenance of any of the NAAQS or any other applicable requirement of the CAA.

This section 110(l) non-interference demonstration is a case-by-case determination based upon the

circumstances of each SIP revision. EPA interprets 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which the EPA has not yet made designations. The specific elements of the 110(l) analysis contained in the SIP revision depend on the circumstances and emissions analyses associated with that revision. EPA's analysis of North Carolina's March 27, 2013, SIP revision, including review of section 110(l) requirements is provided below.

Finally, EPA notes that this rulemaking is only proposing to approve the State's revision to its existing maintenance plan for the Triangle Area showing that the area can continue to maintain the standard without relying upon gasoline with an RVP of 7.8 psi being sold in the Triangle area during the high ozone season. Consistent with CAA section 211(h) and the Phase II volatility regulations a separate rulemaking is required for relaxation of the current requirement to use gasoline with an RVP of 7.8 psi in the Triangle area.⁴

V. What is EPA's analysis of North Carolina's submittal?

a. Overall Preliminary Non-Interference Analyses Conclusions for North Carolina's Request for the Revision of the Maintenance Plan

As discussed above, on March 27, 2013, NC DENR submitted a revision to the existing maintenance plan for the Triangle 1997 8-hour ozone maintenance area. Specifically, NC DENR revised the modeling for on-road mobile, off-road mobile, and area source emissions. The modeling was revised to show the emission changes that would result from relaxing the gasoline RVP requirement from 7.8 psi to 9.0 psi for the Triangle Area during the high ozone season. North Carolina's March 27, 2013, SIP revision also included an evaluation of the impact that the removal of the 7.8 psi RVP requirement would have on maintenance of the 1997 and 2008 ozone standards and on other applicable NAAQS. For the purposes of this proposed change to the applicable RVP requirement, EPA is making the preliminary determination that the relevant NAAQS⁵ for consideration in the non-interference demonstration required by section 110(l) of the CAA

⁴ While EPA evaluates the approvability of North Carolina's revision to the maintenance plan pursuant to section 110(l), the decision regarding removal of Federal RVP requirements pursuant to section 211(h) in the Triangle Area is made at the discretion of the Administrator.

⁵ The six NAAQS for which EPA establishes health and welfare based standards are CO, lead, NO₂, ozone, PM, and SO₂.

³ See 55 FR 23658 (June 11, 1990), 56 FR 24242 (May 29, 1991) and 56 FR 64704 (Dec. 12, 1991).

are the ozone, particulate matter and nitrogen dioxide (NO₂) standards.

VOC and NO_x emissions are precursors for ozone and particulate matter (PM), and NO₂ is a component of NO_x. In addition, EPA also believes that, in this instance, it is appropriate to also evaluate non-interference with respect to the carbon monoxide (CO) NAAQS. Typically, EPA would not expect the CO NAAQS to be affected by a change to RVP requirements because VOC and NO_x are not precursors to CO. The revised modeling submitted by North Carolina, however, demonstrates a slight increase in CO emissions, and as such, EPA believes a non-interference review for CO is also appropriate in this case.

There are no emissions reductions attributable to the emissions of lead and sulfur dioxide (SO₂) from RVP requirements. As a result, there is no information indicating the proposed change would have any impact on those NAAQS. Additionally, the Triangle Area is currently designated attainment for the lead NAAQS, and is continuing to attain the standard. As for the SO₂ NAAQS, the Triangle Area is not designated nonattainment, and there is no available monitoring data indicating an exceedance of the NAAQS. Therefore, the analysis below focuses on the impact of North Carolina's changes to the RVP requirements on the ozone, particulate matter, NO₂ and CO NAAQS.

To determine the emissions reviewed in the technical demonstration included with the March 27, 2013, SIP revision, NC DENR compared the 2005 baseline emissions inventory to the 2017 projected emissions inventory. The baseline emissions inventory represents an emission level for a period when the applicable ambient air quality standard was not violated, 2004–2006. NC DENR concluded that if projected emissions remain at or below the baseline emissions, continued maintenance is demonstrated and the ambient air quality standard should not be violated in the future. In addition to comparing the final year of the maintenance plan, NC DENR's technical demonstration also compares all of the interim years to the 2005 baseline to demonstrate that

these years are also expected to show continued maintenance of all NAAQS.

Also, in North Carolina's March 27, 2013, SIP revision, NC DENR provided an updated analysis utilizing the MOVES model to calculate on-road emissions that are used as part of the evaluation of the potential impacts for the ozone NAAQS that might result exclusively from changing the high ozone season RVP requirements from 7.8 psi to the requirement of 9.0 psi. Relaxation of the RVP standard from 7.8 psi to 9.0 psi revealed a slight increase in emissions of 0.30 tons per day (tpd) (a 0.20 percent increase) in NO_x and 3.88 tpd (a 2.44 percent increase) in VOC for Durham, Granville and Wake Counties. While the modeling showed a slight increase in NO_x and VOC emissions resulting from the use of 9.0 psi RVP as opposed to 7.8 psi, the most appropriate analysis for purposes of evaluating non-interference is whether total area emissions from all emissions inventory sources (i.e., point and area stationary, and on-road and non-road mobile) in the future years would remain at or below the level determined to be consistent with maintenance of the 1997 ozone NAAQS. To provide this full evaluation, the State compared total man-made emissions of VOC and NO_x for the year 2005 (base year), 2008 and 2011 using a RVP of 7.8 psi (for Durham, Granville and Wake Counties only as the remaining Triangle Area Counties are currently using a RVP of 9.0 psi) to emissions generated for the years 2014 and 2017, using a RVP of 9.0 psi.

There are four different man-made emission inventory source classifications; 1) point, 2) area, 3) on-road mobile and 4) off-road mobile. Point sources are those stationary sources that emit more than 10 tons per year of VOC or 100 tons per year of NO_x from a single facility. The source emissions are tabulated from data collected by direct on-site measurements of emissions or mass balance calculations utilizing emission factors from EPA's AP-42, Compilation of Air Pollutant Emission Factors. For the projected year's inventory, point sources are adjusted by growth factors

based on Standard Industrial Classification codes. The growth factors are generated using the EPA's Economic Growth Analysis System version 5.0 (E-GAS 5.0) program. Area sources are those stationary sources whose emissions are relatively small but due to the large number of these sources, the collective emissions could be significant (i.e., dry cleaners, service stations, etc.). For area sources, emissions are estimated by multiplying an emission factor by some known indicator of collective activity such as production, number of employees, or population. These types of emissions are estimated on the county level. For the projected year's inventory, area source emissions are changed by population growth, projected production growth, or when applicable, by E-GAS 5.0 growth factors. On-road mobile sources are those vehicles that travel on the roadways. For on-road mobile sources, the MOVES model results represent the new motor vehicle emission budgets for the Triangle area. Off-road mobile sources are equipment that can move but do not use the roadways (e.g., lawn mowers, construction equipment, railroad locomotives, and aircraft). With the exception of the railroad locomotives and aircraft engines, the emissions from this category are calculated using the EPA's NONROAD2008a non-road mobile model. The railroad locomotive and aircraft engine emissions are estimated by taking an activity and multiply by an emission factor. All emissions are also estimated at the county level. Total off-road mobile source emissions represent the sum of emissions generated by the NONROAD 2008a model and emissions calculated for aircraft and railroad locomotives.

Despite the small increases in emissions from the change to the RVP control, the Triangle Area continues to demonstrate a downward trend in NO_x and VOC emissions through 2017. Tables 1 and 2 below provide the results of this analysis for the entire Triangle Area (including the three Counties (noted in *italics*) affected by the proposed RVP relaxation).

TABLE 1—TOTAL MAN-MADE VOC EMISSIONS (*tpd*) FOR THE TRIANGLE MAINTENANCE AREA

County	2005	2008	2011	2014	2017
Chatham *	5.52	5.57	5.23	5.00	4.85
Durham	25.94	23.27	20.93	19.47	18.31
Franklin	11.81	11.55	11.20	11.14	11.23
Granville	12.78	12.38	11.98	11.85	11.90
Johnston	30.58	29.43	28.31	27.73	27.57
Orange	15.42	14.35	13.10	12.13	11.35
Person	9.00	8.65	8.32	8.12	8.07

TABLE 1—TOTAL MAN-MADE VOC EMISSIONS (*tpd*) FOR THE TRIANGLE MAINTENANCE AREA—Continued

County	2005	2008	2011	2014	2017
Wake	87.45	81.34	75.61	72.33	69.85
Total	198.50	186.54	174.68	167.77	163.13

* Emissions for Center, New Hope and Williams Townships in Chatham County only.

TABLE 2—TOTAL MAN-MADE NO_x EMISSIONS (*tpd*) FOR THE TRIANGLE MAINTENANCE AREA

County	2005	2008	2011	2014	2017
Chatham*	5.01	4.44	3.79	3.17	2.73
Durham	39.48	35.16	28.45	23.52	19.73
Franklin	7.68	6.55	5.37	4.49	3.82
Granville	10.94	8.98	7.01	5.56	4.57
Johnston	34.22	28.94	23.19	19.32	16.47
Orange	23.37	20.64	16.53	13.52	11.31
Person	37.48	31.38	31.20	31.02	29.72
Wake	106.52	98.12	83.82	69.97	59.06
Total	264.70	234.21	199.36	170.57	147.41

* Emissions for Center, New Hope and Williams Townships in Chatham County only.

As Table 1 and 2 indicate, NO_x and VOC emissions in the Triangle Area will continue to decrease, even with the increase in high ozone season fuel RVP to 9.0 psi. The slight increase in emissions is being mitigated area-wide by a steady decrease in tailpipe emissions, which is the result of cleaner new vehicle fleet replacing the older fleet and other Federal and State emissions reduction programs. As discussed below, based on this data, together with air quality data, and maintenance demonstrations and attainment designations for the NAAQS, EPA is making the preliminary determination that the slight increase in NO_x and VOC emissions resulting from this change will not interfere with the Area's ability to maintain the 1997 8-hour ozone NAAQS, or any other applicable requirement. More details on the individual non-interference analyses for the ozone, PM, NO₂ and CO NAAQS are provided below.

b. Non-Interference Analysis for the Ozone NAAQS

Effective June 15, 2004, the Triangle Area was designated as nonattainment for the 1997 8-hour ozone NAAQS. The primary precursors for ozone are VOC and NO_x emissions. As a previous 1-hour ozone nonattainment area, Durham and Wake Counties and a portion of Granville County in the Triangle Area were already subject to the Federal RVP requirements for high ozone season gasoline to aid the Area with compliance with the ozone NAAQS. Although originally implemented for the 1-hour ozone NAAQS, the Federal RVP requirements continued to apply to

Durham and Wake Counties and a portion of Granville County for the 1997 and 2008 8-hour ozone NAAQS, and are still in effect.

On June 7, 2007, NC DENR submitted a redesignation request and maintenance plan for the 1997 8-hour ozone NAAQS. NC DENR used the MOBILE6.2 mobile source emissions model to estimate the emissions for on-road sources and NONROAD2005c non-road mobile model for off-road sources. In the years 2014 and 2017, NC DENR projected a reduction from the 2005 base year inventory of approximately 38 percent and 45 percent (respectively) in NO_x emissions (in tpd). The projected reduction of VOC emissions (in tpd) for the years 2014 and 2017 is approximately 36 percent and 44 percent, respectively, from the 2005 base year emissions inventory.

There is an overall downward trend in ozone concentration in the Triangle Area that can be attributed to Federal and State programs that have led to significant emissions reductions. On December 26, 2007, (72 FR 72948), EPA approved North Carolina's 1997 8-hour ozone maintenance plan for the Triangle Area, and redesignated the Area to attainment for the 1997 8-hour ozone NAAQS. The Triangle Area is continuing to meet the 1-hour and 1997 8-hour ozone NAAQS,⁶ and is meeting the 2008 8-hour ozone NAAQS, based on recent air quality monitoring data.

⁶ The air quality design value for the 8-hour ozone NAAQS is the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentration. The level of the 2008 8-hour ozone NAAQS is 0.075 ppm. The 2008 8-hour ozone NAAQS is not met when the design value is greater than 0.075 ppm.

The 2008 ozone NAAQS is met when the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years is 75 parts per million (ppm) or less.

As mentioned above, on December 26, 2007 (72 FR 72948), EPA approved North Carolina's June 7, 2007, maintenance plan for the Triangle Area. This maintenance plan contained MVEBs for NO_x and an insignificance determination for VOC contribution from motor vehicles to the 8-hour ozone pollution in the Triangle Area. For the purposes of regional emissions analysis, the information provided by North Carolina supported EPA's determination that VOC contribution to 8-hour ozone pollution from motor vehicles in the Triangle Area as insignificant for the 1997 8-hour ozone NAAQS. Specifically, the future on-road VOC emissions were projected to be less than 10 percent in the Triangle Area, in the context of the total SIP inventory. According to information provided by North Carolina, biogenic emissions account for approximately 90 percent of the VOC emissions in future years in the Triangle Area.

In addition, North Carolina conducted a emissions sensitivity analysis that indicated that 1997 and 2008 8-hour ozone levels in the Triangle Area were not impacted by reductions in man-made VOC emissions (e.g., reductions from motor vehicles). Specifically, the photochemical model was run for a 39-day scenario in 2009 with a 30 percent reduction in all man-made VOC emissions. In addition, two mobile

source specific sensitivity simulations⁷ were conducted by NCDQA over a 7-day period to specifically focus on the impact of mobile source emissions on ozone formation. None of these emissions sensitivity simulations resulted in a significant response in ozone formation. This supports the State's proposal that the highway mobile VOC emissions are insignificant contributors to ozone formation.

The current design value for ozone for the Triangle Area for 2010–2012 is 0.075

ppm and the preliminary 2011–2013 design value is 0.071 ppm for this Area. EPA also evaluated the potential increase in the VOC and NO_x precursor emissions, and whether it is reasonable to conclude that the requested change to RVP requirements in Durham, Granville and Wake Counties during the high ozone season would cause the Area to be out of compliance with the 2008 8-hour ozone NAAQS.

In light of the current designations, monitoring and emissions data, and the

submitted modeling, including the fact that the NO_x emissions inventories are projected to continue to significantly decrease,⁸ EPA has preliminarily determined that North Carolina's revision of the maintenance plan to no longer rely on gasoline with 7.8 psi RVP requirement in Durham, Granville and Wake Counties will not interfere with attainment or maintenance of the ozone NAAQS. As Table 3 indicates the design value (DV) for the Triangle Area shows that the Area is meeting the NAAQS.

TABLE 3—TRIANGLE AREA DESIGN VALUE

2004–2006 DV (ppm)	2005–2007 DV (ppm)	2006–2008 DV (ppm)	2007–2009 DV (ppm)	2008–2010 DV (ppm)	2009–2011 DV (ppm)	2010–2012 DV (ppm)
0.080	0.081	0.080	0.077	0.074	0.073	0.075

c. Non-Interference Analysis for the PM NAAQS

The precursors for PM_{2.5} are NO_x, SO₂, VOC and ammonia. For the Triangle Area, on-road mobile, off-road mobile and area sources are not believed to be large contributors to directly emitted fine particulate matter less than 2.5 micrometers (PM_{2.5}) or indirectly formed PM_{2.5} concentrations. As mentioned earlier in this rulemaking, the RVP requirements result in emissions benefits for VOC and NO_x so EPA focused on these precursors for the analysis of the potential impact of North Carolina's SIP change. However, as described in North Carolina's March 27, 2013, submission, directly emitted PM_{2.5} is a very small component of the overall PM_{2.5} ambient concentrations. Instead, the primary species impacting PM_{2.5} concentrations are the secondarily formed sulfates and organic carbons.

Sulfates are formed through the chemical reaction of SO₂ and ammonia, and the majority of the organic carbons come from natural sources like trees.

See "Redesignation Demonstration and Maintenance Plan for the Hickory (Catawba County) and Greensboro/Winston-Salem/High Point (Davidson and Guilford Counties) Fine Particulate Matter Nonattainment Areas", submitted to EPA on 18 December 2009, Figure 4–2, p. 4–4, which can be accessed at www.regulations.gov using docket ID No. EPA–R04–OAR–2009–1010. A 2009 analysis of SO₂ emissions, which is a primary contributor to the formation of PM_{2.5} within North Carolina, found about 3.3 percent of total SO₂ emissions came from on-road, off-road and area sources combined, while the remaining 96.7 percent came from point sources.

On July 18, 1997 (62 FR 38652), EPA established an annual PM_{2.5} NAAQS at 15.0 micrograms per cubic meter (µg/m³) based on a 3-year average of annual mean PM_{2.5} concentrations. At that time, EPA also established a 24-hour NAAQS of 65 µg/m³. See 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual PM_{2.5} NAAQS

at 15.0 µg/m³ based on a 3-year average of annual mean PM_{2.5} concentrations, and promulgated a new 24-hour NAAQS of 35 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. On January 15, 2013 (78 FR 3086), EPA established an annual primary PM_{2.5} NAAQS at 12.0 µg/m³ based on a 3-year average of annual mean PM_{2.5} concentrations. At that time, EPA retained the 2006 24-hour NAAQS at 35 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005 (70 FR 944), all counties in the Triangle Area were designated unclassifiable/attainment for the 1997 annual PM_{2.5} standard, and on November 13, 2009 (74 FR 58688), all counties in the Triangle Area were designated unclassifiable/attainment for the 2006 24-hour PM_{2.5} standard. As Table 4 indicates the PM_{2.5} annual and 24-hour design values demonstrate attainment of the respective NAAQS and those for the annual standard have been decreasing.

TABLE 4—PM_{2.5} DESIGN VALUES

Year	2008–2010	2009–2011	2010–2012
Annual Standard			
Design Value	10.4	9.8	10.0
24-hour Standard			
Design Value	22	22	22

In light of the fact that a change to the NC Maintenance Plan to no longer rely on gasoline with a 7.8 psi RVP

requirement will only result in a slight increase in VOC and NO_x emissions, EPA has preliminarily determined that

a change to the Federal RVP requirement for Durham, Granville and Wake Counties would not interfere with

⁷ One simulation ran a 50 percent increase in mobile source emissions in the Triangle ozone nonattainment counties and the second ran a 50

percent decrease in mobile source emissions in the counties.

⁸ Future decreases in the inventory are an order of magnitude greater than the increases associated with the change in RVP.

the Triangle Area maintaining the 1997 PM_{2.5} annual or the 2006 24-hour PM_{2.5} standards.

d. Non-Interference Analysis for the 2010 NO₂ NAAQS

On February 17, 2012 (77 FR 9532), EPA finalized designations for 2010 NO₂ NAAQS. Counties in North Carolina, including those in the Triangle Area, were designated unclassifiable/attainment for the 2010 NO₂ NAAQS. Based on North Carolina's March 27, 2013, SIP revision, EPA has evaluated the potential increase in the NO_x emissions (approximately a quarter of a ton per day between June 1st and September 15th) and whether it is reasonable to believe that North Carolina's requested change for its high ozone season RVP requirement would

cause the Area to be out of compliance with the 2010 NO₂ NAAQS. The slight increase in NO_x emissions is being mitigated by a steady decrease in tailpipe emissions,⁹ which is the result of cleaner new vehicle fleet replacing the older fleet. See table 2 above.

In light of the current designation, monitoring and emissions trend data and the submitted modeling, including the fact that NO_x emissions inventories are projected to continue to significantly decrease, EPA has preliminarily determined that a change to the Federal RVP requirements for the Triangle Area would not interfere with the continued decline in NO_x emissions, nor with attainment or maintenance of the 2010 NO₂ NAAQS.

e. Non-Interference Analysis for the CO NAAQS

Durham and Wake Counties in the Triangle Area were previously designated nonattainment for the 8-hour CO NAAQS. See 56 FR 56694, November 6, 1991. Subsequently, Durham and Wake Counties attained the 8-hour CO NAAQS and was redesignated from nonattainment to attainment. On August 2, 1995, EPA redesignated Durham and Wake Counties to attainment for the 8-hour CO NAAQS based on the measured air quality data and the 10-year maintenance plan submitted. See 60 FR 39258. The 8-hour CO NAAQS is 9 ppm and the 1-hour CO NAAQS is 35 ppm. Monitoring data from 2009–2012 shows Wake County is well below the 8-hour CO NAAQS values as listed in Table 5.

TABLE 5—CO 8-HOUR MONITORED CONCENTRATION NAAQS
[ppm]

County	Monitor ID	2009	2010	2011	2012
8-hr NAAQS					
Wake	371830014	1.3	1.3	1.4	1.3
1-hr NAAQS					
Wake	371830014	2.1	2.1	1.8	1.9

Based upon the revised modeling associated with the proposed relaxation of the RVP standard in the three portions of the Triangle Area currently

subject to the more stringent standard, it is estimated that Triangle Area on-road CO emissions will increase approximately 6.3 tons per day in 2014

and 2017. This projected increase represents an increase in the total inventory of less than 1 percent.

TABLE 6—2010 CO EMISSIONS (TONS/DAY) FOR MAINTENANCE AREAS

County	Point source	Area source	On-road	Non-road	Total
Raleigh-Durham Maintenance Area					
Durham	0.97	1.54	186.00	19.04	207.55
Wake	1.17	4.26	642.97	70.62	719.02
Total	2.14	5.80	828.97	89.66	926.57

In light of the slight increase in CO emissions, and the existing air quality data showing a wide margin of compliance with the CO NAAQS, EPA has preliminarily determined that a change to the Federal RVP requirement for Durham, Granville and Wake Counties would not interfere with the Raleigh-Durham Area maintaining the CO standards. As Table 5 above indicates the CO design value is well below the standard.

VI. Mobile Source Inventories and Motor Vehicle Emission Budgets Update

a. Background

On June 7, 2007, the State of North Carolina, through NC DENR, submitted a final request for EPA to: (1) Redesignate the Triangle Area to attainment for the 1997 8-hour ozone standard; and (2) approve a North Carolina SIP revision containing a maintenance plan for the Triangle Area.

On December 26, 2007 (72 FR 72948), EPA approved the redesignation request for the Triangle Area. Additionally, EPA approved the 1997 8-hour ozone maintenance plan including NO_x MVEBs for the Triangle Area.¹⁰ These approvals were based on EPA's determination that the State of North Carolina had demonstrated that the Triangle Area met the criteria for redesignation to attainment specified in the CAA, including the determination

⁹ See table 2 above.

¹⁰ In the December 26, 2007 final rule EPA also approved NC DENR's determination that on-road

emissions of VOCs are insignificant for transportation conformity purposes. We are not

addressing that insignificance finding in today's proposal.

that the entire Triangle Area had attained the 1997 8-hour ozone NAAQS.

At the time of original redesignation request, the on-road motor vehicle inventory was generating by the MOBILE6.2 model, which at the time was the current MVEB model. The proposed change to the maintenance plan discussed above includes a MVEB generated by the MOVES model which has since replaced MOBILE6.2 model. In addition, the model used to calculate the original non-road inventory (NONROAD2005c) has also since been updated by a new non-road inventory model (NONROAD2008a).

As a result of these new models and the revised emission associated with a relaxed RVP standard, the safety margin¹¹ calculations provided in the revised maintenance plan have changes

from the previous margins included with the original maintenance plan. Therefore, North Carolina's revision includes a reallocation of the safety margin to the NO_x MVEB based upon the revised calculations. EPA's preliminary analysis of these changes is described below.

b. On-Road Inventory

As discussed above, the on-road motor vehicle emissions in the revised maintenance plan are calculated using the MOVES model. The MOVES model uses the road class vehicle miles traveled (VMT) and other operating conditions as input parameters to generate an output file that contains estimated emissions. For the projected years inventories, the on-road mobile sources emissions are calculated by

running the MOVES mobile model for the future year with the projected VMT to generate emissions that take into consideration expected Federal tailpipe standards, fleet turnover and new fuel standards.

Table 7 shows the on-road Chatham, Franklin, Johnston, Orange and Person Counties emissions based on the current RVP of 9.0 psi and the on-road Wake, Durham, and Granville Counties emissions based on the current RVP of 7.8 psi. Table 8 shows the on-road emissions data for Durham, Granville and Wake Counties for 2005, 2008 and 2011 based on 7.8 psi and the comparison of the projected 2014 and 2017 emissions based on a RVP relaxation to 9.0 psi for the three counties.

TABLE 7—MOVES ON-ROAD EMISSIONS FOR THE TRIANGLE AREA *

	2005	2008	2011	2014	2017
VOC Emissions (tons/day)					
MOVES	87.66	74.10	59.13	48.22	38.97
NO_x Emissions (tons/day)					
MOVES	175.18	152.05	117.46	91.84	72.88

* Wake, Durham, and Granville Counties emissions based on the current RVP of 7.8 psi.

TABLE 8—MOVES ON-ROAD EMISSIONS COMPARISON *

	2005	2008	2011	2014 **	2017 **
VOC Emissions (tons/day)					
MOVES	57.69	49.01	39.21	31.90/32.94	25.64/26.44
NO_x Emissions (tons/day)					
MOVES	116.11	102.92	80.09	62.56/62.99	49.48/49.78

* Emissions data for Durham, Granville and Wake Counties only.

** Wake, Durham, and Granville Counties emissions based on relaxation of RVP of 7.8 psi to 9.0 psi.

c. Non-Road Inventory

In the original 2007 redesignation demonstration and maintenance plan, the model used to generate off-road emissions was the NONROAD2005c model. Since 2007, EPA has updated the non-road model to NONROAD2008a. NONROAD2008a is the latest USEPA approved non-road model. In this revision, the NONROAD2008a model is used to generate non-road emissions for all inventory years—2005, 2008, 2011, 2014, and 2017. Also, the non-road emissions documentation includes the general conformity analysis for two new

nuclear generating units at Duke-Progress Energy Company in Wake County.

d. Motor Vehicle Emissions Budgets

In the March 27, 2013, SIP revision, North Carolina provided an increase for the amount of safety margins allocated to the NO_x MVEBs to account for changes in the projection models. The MVEBs in this SIP revision which EPA is proposing to approve update the MVEBs which were originally approved by EPA on December 26, 2007. The updated MVEBs are outlined in table 9 below.

NC DENR is currently allocating portions of the available safety margin to the MVEBs to allow for unanticipated VMT growth as well as changes to future vehicle mix assumptions that influence the emission estimations. In the March 2013 SIP revision, North Carolina is seeking to adjust the safety margins. The following tables provide the adjusted NO_x MVEBs, in kilograms per day (kg/d) for the 2008 base attainment year inventories, as well as the projected NO_x emissions inventory 2017 for each County.

¹¹ A safety margin is the difference between the attainment level of emissions from all source categories (i.e., point, area, and mobile) and the projected level of emissions from all source

categories. The State may choose to allocate some of the safety margin to the MVEBs, for transportation conformity purposes, so long as the total level of emissions from all source categories

remains equal to or less than the attainment level of emissions. (40 CFR 93.124(a))

TABLE 9—TRIANGLE AREA (COUNTY LEVEL) NO_x MVEB IN KILOGRAMS PER DAY

County		2008 NO _x (kg/d)	2017 NO _x (kg/d)
Chatham*	Base Emissions	3,033	1,690
	Safety Margin	455	422
	NO _x Conformity MVEB	3,488	2,112
Durham	Base Emissions	22,438	10,509
	Safety Margin	2,244	2,101
	NO _x Conformity MVEB	24,682	12,610
Franklin	Base Emissions	4,537	2,204
	Safety Margin	454	441
	NO _x Conformity MVEB	4,991	2,645
Granville	Base Emissions	6,105	2,622
	Safety Margin	916	656
	NO _x Conformity MVEB	7,021	3,278
Johnston	Base Emissions	20,320	9,865
	Safety Margin	2,032	1,972
	NO _x Conformity MVEB	22,352	11,838
Orange	Base Emissions	13,820	6,137
	Safety Margin	1,382	1,227
	NO _x Conformity MVEB	15,202	7,364
Person	Base Emissions	2,871	1,340
	Safety Margin	431	335
	NO _x Conformity MVEB	3,302	1,674
Wake	Base Emissions	64,825	32,034
	Safety Margin	6,483	6,407
	NO _x Conformity MVEB	71,308	38,441
Total	New Safety Margin	14,396	13,563

* Chatham County emissions for maintenance area only.

A total of 14,396 kg (15.87 tpd) and 13,563 kg (14.95 tpd) from the available NO_x safety margins in 2008 and 2017, respectively, were added to the MVEBs for the Triangle Area.

As demonstrated above, the Triangle Area is projected to steadily decrease its total NO_x emissions from the base year of 2005 to the maintenance year of 2017. This NO_x emission decrease demonstrates continued attainment/maintenance of the 1997 8-hour ozone NAAQS for ten years from 2007 (the year the Area was effectively designated attainment for the 1997 8-hour ozone NAAQS) as required by the CAA.

VII. Proposed Action

EPA is proposing to approve the State of North Carolina's March 27, 2013, revision to its Maintenance Plan for the Triangle 1997 8-hour Ozone Maintenance Area. Specifically, EPA is proposing to approve the State's showing that the Triangle Area can continue to maintain the 1997 ozone standard without emissions reductions associated with the use of 7.8 psi RVP gasoline in the three portions of the Triangle Area currently subject to the 7.8 psi RVP standard during the high ozone season—June 1 through September 15.

EPA proposes to approve the revised and updated modeling submitted by the State, which shows that the Triangle Area can continue to maintain the 1997

ozone standard if the applicable RVP standard in the three portions of the Triangle Area, the North Carolina revision is changed. EPA is also proposing to approve the revised NO_x MVEBs for 2008 and 2017 including the revised and reallocated safety margin among the NO_x MVEBs for the Triangle Area.

EPA has preliminarily determined that North Carolina's March 27, 2013, SIP revision, including the technical demonstration associated with the State's request for the removal of the Federal RVP requirements, and the updated MVEBs are consistent with the applicable provisions of the CAA. Should EPA decide to remove the subject portions of the Triangle Area from those areas subject to the 7.8 psi Federal RVP requirements, such action will occur in a separate, subsequent rulemaking.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submittal that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does

not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, October 7, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 21, 2013.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2013-25782 Filed 10-29-13; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 153

[Docket No. USCG-2013-0915]

RIN 1625-ZA31

Carriage of Conditionally Permitted Shale Gas Extraction Waste Water in Bulk

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of a proposed policy letter concerning the carriage of shale gas extraction waste water in bulk via barge, and invites public comment. The policy letter specifies the conditions under which a barge owner may request and be granted a Certificate of Inspection endorsement or letter allowing the barge to transport shale gas extraction waste water in bulk. The policy letter also defines the information the Coast Guard may require the barge owner to provide and specifies the additional requirements the Coast Guard is considering imposing on such barges. Upon reviewing

comments received on this proposed policy letter, Coast Guard will issue the final policy letter and specify its effective date.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before November 29, 2013 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2013-0915 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Dr. Cynthia A. Znati, Office of Design and Engineering Standards, Hazardous Materials Division, U.S. Coast Guard; telephone 202-372-1412, email HazmatStandards@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the proposed policy letter concerning the carriage of conditionally permitted shale gas extraction waste water in bulk. In particular, we specifically request public comment regarding the disclosure of proprietary information to the Coast Guard, and regarding the applicability of testing requirements for radioactive materials to all regions where shale gas extraction waste water may be transported by barge. All comments received will be posted, without change, to <http://www.regulations.gov> and will include

any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG-2013-0915) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Notices” and insert “USCG-2013-0915” in the “Keyword” box. Click “Search” then click on the balloon shape in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments and proposed new policy letter: To view the comments and the policy letter, go to <http://www.regulations.gov>, click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “USCG-2013-0915” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background and Purpose

This notice is issued under authority of 5 U.S.C. 552(a). The purpose of this notice is to announce the availability of the Coast Guard's proposed policy letter entitled "Carriage of Conditionally Permitted Shale Gas Extraction Waste Water in Bulk," and to request public comments on the policy the letter describes. The policy letter specifies the conditions under which a barge owner may request and be granted a Certificate of Inspection endorsement or letter, under 46 CFR part 153, allowing the barge to transport shale gas extraction waste water (SGEWW) in bulk as Conditionally Permitted SGEWW. The policy letter also defines the information the Coast Guard may require the barge owner to provide and specifies the additional requirements the Coast Guard is considering imposing on such barges.

SGEWW is a by-product of drilling for natural gas using unconventional hydraulic fracturing technology, which involves the injection of water, sand, and chemical additives. The sand remains in the well but a substantial portion of the injected fluid re-surfaces after the drilling and must be handled as SGEWW. At present, this SGEWW is either stored at the drilling site or transported by rail or truck to remote storage or reprocessing centers. There is commercial interest in transporting SGEWW from northern Appalachia via inland waterways to storage or reprocessing centers and final disposal sites in Ohio, Texas, and Louisiana.

Pursuant to 46 CFR 153.900(a) and (c), under certain circumstances a bulk liquid hazardous material may be transported by a tank vessel if it is a "listed cargo" (listed in any of several specified tables in Coast Guard regulations). SGEWW, however, cannot

be treated as a "listed cargo" because the specific chemical composition of SGEWW varies from one consignment load to another and may contain one or more hazardous materials as defined in 46 CFR 153.2, including radioactive isotopes such as radium-226 and radium-228. Variables affecting the chemical composition of SGEWW include the chemicals present in the initial drilling fluid, the specific site being drilled, and the age of the well. In addition, each load can be a mixture of SGEWW from different wells.

Upon reviewing comments received on this proposed policy letter, Coast Guard will issue the final policy letter and specify its effective date.

Dated: October 23, 2013.

J.G. Lantz,

Director of Commercial Regulations and Standards, United States Coast Guard.

[FR Doc. 2013-25628 Filed 10-29-13; 8:45 am]

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Notices

Federal Register

Vol. 78, No. 210

Wednesday, October 30, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 24, 2013.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@omb.eop.gov or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by November 29, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information

unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Fruit and Vegetable Market News Reports.

OMB Control Number: 0581–0006.

Summary of Collection: Section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621) directs and authorizes the collection of information and disseminating of marketing information including adequate outlook information on a market-area basis for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and bring about balance between production and utilization of agriculture products. Market News provides all interested segments of the market chain with market information tends to equalize the competitive position of all market participants. The fruit and vegetable industries, through their organizations, or government agencies present formal requests that the Department of Agriculture issue daily, weekly, semi-monthly, or monthly market news reports on various aspects of the industry.

Need and Use of the Information: AMS will collect information on some 330 ornamentals, fresh fruit and vegetables, and specialty crops for the production of Market News reports that are then available to the industry and other interested parties in various formats. Information is provided on a voluntary basis and collected in person through face-to-face interviews and by confidential telephone throughout the country by market reporters. The absence of these data would deny primary and secondary users information that otherwise would be available to aid them in their production and marketing decisions, analyses, research and knowledge of current market conditions. The omission of these data could adversely affect prices, supply, and demand.

Description of Respondents: Farms; business or other for-profit.

Number of Respondents: 3,168.

Frequency of Responses: Reporting: Daily; weekly; monthly.

Total Burden Hours: 61,161.

Agricultural Marketing Service.

Title: Regulations for Voluntary Grading of Poultry Products and Rabbit Products, 7 CFR Part 70.

OMB Control Number: 0581–0127.

Summary of Collection: The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and services to enable a more orderly marketing of agricultural products so trading may be facilitated and so consumers may be able to obtain products graded and identified under USDA programs. Regulations in 7 CFR Part 70 provide for a voluntary program for grading poultry and rabbits on the basis of U.S. classes, standards and grades. The Agricultural Marketing Service (AMS) carries out the regulations, which provide a voluntary program for grading poultry and rabbit products.

Need and Use of the Information:

This is a voluntary program on a fee for service basis. Respondents need to provide their name and address and other relevant information to request or apply for the specific service they want. The information is needed to administer the program, assess the cost of providing service, and to assure graded poultry and rabbits are properly labeled. Without this information the agency could not ensure properly labeled poultry and rabbit products and the integrity of the USDA grade mark if each new label was not submitted for approval.

Description of Respondents: Business or other for profit; farms.

Number of Respondents: 690.

Frequency of Responses: Reporting: Daily; monthly; semi-annually; annually; Other: On occasion.

Total Burden Hours: 2,006.

Agricultural Marketing Service

Title: Tart Cherries Grown in the states of MI, NY, PA, OR, UT, WA, and WI.

OMB Control Number: 0581–0177.

Summary of Collection: Marketing Order No. 930 (7 CFR Part 930) regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and

Wisconsin. The Agricultural Marketing Agreement Act of 1937 was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in inter and intrastate commerce and improving returns to growers. The primary objective of the Order is to stabilize the supply of tart cherries. Only tart cherries that will be canned or frozen will be regulated. The Order is administered by an 18 member Board comprised of producers, handlers and one public member, plus alternates for each. The members will serve for a three-year term of office.

Need and Use of the Information:

Various forms were developed by the Board for persons to file required information relating to tart cherry inventories, shipments, diversions and other needed information to effectively carry out the requirements of the Order. The information collected is used to ensure compliance, verify eligibility, and vote on amendments, monitor and record grower's information. Authorized Board employees and the industry are the primary users of the information. If information were not collected, it would eliminate needed data to keep the industry and the Secretary abreast of changes at the State and local level.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 640.

Frequency of Responses: Reporting: Annually; quarterly; on occasion.

Total Burden Hours: 727.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013-25613 Filed 10-29-13; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 25, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be

collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 29, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Highly Pathogenic Avian Influenza, All Subtypes, and Newcastle Disease; Additional Restrictions.

OMB Control Number: 0579-0245.

Summary of Collection: The Animal Health Protection Act (AHPA), 7 U.S.C 8301, is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The agency charged with carrying out this disease prevention mission is the Animal and Plant Health Inspection Service (APHIS), through its Veterinary Services (VS) Program. Highly pathogenic avian influenza (HPAI) and Newcastle Disease are extremely infectious and often fatal disease affecting all types of birds and poultry.

Need and Use of the Information: To protect the United States against an incursion of HPAI and Newcastle Disease, APHIS requires the use of several information collection activities, including an USDA-APHIS-VS Application For Permit To Import or Transport Controlled Materials or

Organisms or Vectors (VS Form 16-3); a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors (VS Form 16-6A); an Application for Approval or Report of Inspection Establishment Handling Restricted Animal Byproducts or Controlled Materials (VS Form 16-25); USDA-APHIS-VS Agreement for Handling Restricted Imports of Animal By-Products and Controlled Materials (VS Form 16-26); USDA-APHIS-VS Report of Entry, Shipment of Restricted Imported Animal Products and Animal By-Products, and Other Material (VS Form 16-78); USDA-APHIS-VS Application for Import or in Transit Permit (Animals, Animal Semen, Animal Embryos, Birds, Poultry, and Hatching Eggs) (VS Form 17-129); USDA-APHIS Agreement of Pet Bird Owner (VS Form 17-8); application of seals and agreements; notarized declaration or affirmation; notification of signs of disease in a recently imported bird; cooperative service agreements, and recordkeeping by processing establishments. APHIS will collect information to ensure that U.S. birds and poultry undergo appropriate examinations before entering the United States. Without the information, it would be impossible for APHIS to establish an effective line of defense against an introduction of HPAI and Newcastle Disease.

Description of Respondents:

Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 1,680.

Frequency of Responses: Reporting and Recordkeeping; On occasion.

Total Burden Hours: 1,055.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013-25715 Filed 10-29-13; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 23, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 29, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Unshu Oranges. *OMB Control Number:* 0579-0173.

Summary of Collection: The Plant Protection Act (7 U.S.C. 7701-7772) authorizes the Secretary of Agriculture to restrict the importation, entry or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pest in the United States or their dissemination within the United States. The regulations in "Subpart-Citrus Fruit" (7 CFR 319.28) allow the importation of unshu oranges from Kyushu Island and Honshu Island, Japan, into the United States under certain conditions. A certificate must accompany the unshu oranges from the Japanese plant protection service certifying that the fruit is apparently free of citrus canker.

Need and Use of the Information: The Animal and Plant Health Inspection (APHIS) will collect information using form PPQ 203, Foreign Site Certificate of

Inspection and/or Treatment, PPQ 587, Application for Permit to Import Plants or Plant Products and box labeling. The information from the forms will be used to certify that unshu oranges from Japan are free of citrus canker. To ensure that the oranges from Kyushu Island are not imported into citrus-producing areas of the United States such as Florida and California, individuals boxes must be stamped or printed with a statement specifying the State into which the oranges may be imported and from which they are prohibited removal under a Federal quarantine. Failing to collect this information would cripple APHIS' ability to ensure that Unshu oranges from Japan are not carrying citrus canker.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 23.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5,535.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013-25371 Filed 10-29-13; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region: Invasive Plant Control Project, Carson and Santa Fe National Forests, New Mexico

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: On December 15, 2000, the USDA Forest Service published a notice of intent (NOI) in the **Federal Register** (65 FR 78464) to prepare an environmental impact statement (EIS) for controlling invasive plants in the Carson and Santa Fe National Forests. The agency published a notice of availability (NOA) for the Draft EIS in the **Federal Register** (69 FR 42722) on July 16, 2004. A record of decision was signed on September 12, 2005 and an NOA was subsequently published in the **Federal Register** (70 FR 69967) on November 18, 2005. Members of the public appealed the decision before the Regional Forester of the Southwestern Region, who reviewed the decision in accordance with 36 CFR 215.7. The Regional Forester's decision, issued on February 23, 2006, reversed the Responsible Officials' decision on the project, with the following instructions:

(1) Complete the analysis of effects on the Management Indicator Species population trend for ptarmigan.

(2) Strengthen the disclosure of cumulative effects to wildlife species.

(3) Address the concern about the use of picloram in municipal watersheds.

On September 10, 2009, the USDA Forest Service published a corrected NOI in the **Federal Register** (74 FR 46562). The NOI listed the date of completion and distribution for the draft supplemental environmental impact statement (DSEIS) as being December 2009.

DATES: *Revised dates:* It is estimated the DSEIS will be completed and available for review no later than March 31, 2014. A 45-day comment period will follow. The Forest Service estimates the final supplemental environmental impact statement (FSEIS) and draft records of decision (each forest is preparing its own record of decision) will be released in July 2014. Pursuant to 36 CFR 218, a 45-day objection period will follow. The final records of decision are expected to be released no later than December 2014.

ADDRESSES: The DSEIS will be posted on these Web sites:

Carson National Forest: <http://www.fs.usda.gov/land/carson/landmanagement>

Santa Fe National Forest: <http://www.fs.usda.gov/projects/santafe/landmanagement>

A limited number of paper copies will be available upon request from either forest: Carson Forest Supervisor's Office, 208 Cruz Alta Road, Taos, NM 87571, Attn: Planning; or Santa Fe National Forest Supervisor's Office, 11 Forest Lane, Santa Fe, NM 87508, Attn: Julie Bain. The address to which to send comments will be published with the DSEIS.

FOR FURTHER INFORMATION CONTACT: Julie Bain, Forest Environmental Coordinator, Santa Fe National Forest Supervisor's Office, 11 Forest Lane, Santa Fe, NM 87508, (505) 438-5443, jbain@fs.fed.us.

SUPPLEMENTARY INFORMATION: An SEIS is needed to update certain elements of the analysis and correct deficiencies identified in the 2005 Invasive Plant Control Project Final Environmental Impact Statement and records of decision. The DSEIS will document the analysis of effects for the same range of alternatives as the 2005 final EIS. The proposed action, which includes the use of herbicides to control invasive species, remains the preferred alternative. The Forest Supervisors of the Carson and Santa Fe National Forests are the responsible officials. Each responsible

official will decide whether the project will be implemented on their respective national forest and each will prepare a separate record of decision.

Importance of Public Participation in Subsequent Environmental Review: The comment period for the DSEIS will be 45 days in duration and commence the day after the NOA is published in the **Federal Register**. Legal notices announcing the availability of the DSEIS will also be published in the newspapers of record, the *Albuquerque Journal* and *The Taos News*, and posted on the Forests' Web sites. This project implements the land management plans and is not authorized under the Healthy Forest Restoration Act, and is therefore subject to subparts A and B of 36 CFR part 218. Objections to the draft records of decision will be accepted only from those who have previously submitted specific written comments regarding the proposed project during the designated opportunity for public comment in accordance with 36 CFR 218.5(a). Issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed project. Issues raised based on new information arising after the opportunity to comment will be considered as well.

Dated: October 21, 2013.

Joseph Norrell,

Deputy Forest Supervisor, Santa Fe National Forest.

[FR Doc. 2013-25708 Filed 10-29-13; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Virginia Resource Advisory Committee will meet in Roanoke, Virginia. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110-343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of the meeting is to prioritize and recommend projects for funding.

DATES: The meetings will be held on Fridays between December 6, 2013 and

February 7, 2014 from 10 a.m. to 6 p.m. Exact meeting dates are:

- December 6, 2013: 10 a.m. to 6 p.m.
- December 13, 2013: 10 a.m. to 6 p.m.
- January 10, 2014: 10 a.m. to 6 p.m.
- January 17, 2014: 10 a.m. to 6 p.m.
- January 24, 2014: 10 a.m. to 6 p.m.
- January 31, 2014: 10 a.m. to 6 p.m.
- February 7, 2014: 10 a.m. to 6 p.m.

All Resource Advisory Committee meetings are subject to change or cancellation. Contact Michael Williams, Public Affairs Specialist, Supervisor's Office, 540-265-5173, mrwilliams04@fs.fed.us for status of Resource Advisory Committee meetings prior to attending each meeting.

ADDRESSES: The meeting will be held at the George Washington and Jefferson National Forests Supervisor's Office conference room at 5162 Valleypointe Parkway, Roanoke, Virginia 24019. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the George Washington and Jefferson National Forest Supervisor's Office. Please call ahead to 540-265-5100 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT:

Michael Williams, Public Affairs Specialist, Supervisor's Office, 540-265-5173, mrwilliams04@fs.fed.us. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION:

Additional information on the Virginia Resource Advisory Committee can be found by visiting the George Washington and Jefferson National Forests' Web site at: www.fs.fed.us/r8/gwj. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing within one week of each scheduled meeting to be scheduled on the agenda. Written

comments and requests for time for oral comments must be sent to Michael Williams, Public Affairs Specialist, George Washington and Jefferson National Forests Supervisor's Office at 5162 Valleypointe Parkway, Roanoke, Virginia 24019; by email to mrwilliams04@fs.fed.us; or via facsimile to 540-265-5145. A summary of the meeting will be posted at www.fs.fed.us/r8/gwj within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Resource Advisory Committee Positions Available: Those interested in serving as a member of the Resource Advisory Committee should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 24, 2013.

Ken Landgraf,

Acting Forest Supervisor.

[FR Doc. 2013-25693 Filed 10-29-13; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Equine Survey. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by December 30, 2013 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535-0227, by any of the following methods:

- **Email:** ombofficer@nass.usda.gov. Include docket number above in the subject line of the message.
- **Fax:** (202) 720-6396.

• *Mail*: Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

• *Hand Delivery/Courier*: Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT:

Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

SUPPLEMENTARY INFORMATION:

Title: Equine Survey.

OMB Number: 0535–0227.

Expiration Date: 03/31/2014.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: To improve information regarding the equine industry, several State Departments of Agriculture are expected to contract the National Agricultural Statistics Service to conduct an Equine Survey in their State within the next 3 years. Equine activities offer unusually varied opportunities for rural development. In addition to providing the livelihood for breeders, trainers, veterinarians, and many others, the horse remains important to recreation. The number of operations, number of animals, and economic information will quantify the importance of the equine industry to State economies. Income data provides a view of the benefits that the industry provides to the State economy and a ranking of its relative importance within both the agricultural sector and the State's total economic sector. The expenditure information provides data regarding the multiplier effect of money from the equine industry, effects of wage rates paid to both permanent and part-time employees, and secondary businesses supported by the industry.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork

Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995). NASS also complies with OMB Implementation Guidance, “Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),” **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33376.

Estimate of Burden: Public reporting burden for this collection of information is estimated to be between 20 and 25 minutes per response.

Respondents: Horse owners, breeders, trainers, boarders.

Estimated Number of Respondents: 40,000.

Estimated Total Annual Burden on Respondents: 15,000 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, September 27, 2013.

Joseph T. Reilly

Associate Administrator.

[FR Doc. 2013–25633 Filed 10–29–13; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 130926838–3838–01]

2013 Company Organization Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2013 Company Organization Survey. The survey's data are needed, in part, to update the multilocation companies in the Business Register. The survey,

which has been conducted annually since 1974, is designed to collect information on the number of employees, payroll, geographic location, current operational status, and kind of business for each establishment of companies with more than one location. We have determined that annual data collected from this survey are needed to aid the efficient performance of essential governmental functions, and that these data have significant application to the needs of the public and industry. The data derived from this survey are not available from any other source.

ADDRESSES: The Census Bureau will furnish report forms to organizations included in the survey, and additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Joy P. Pierson, Economic Planning and Coordination Division, U.S. Census Bureau, Room 8K319, Washington, DC 20233–6100 or by email at joy.p.pierson@census.gov.

SUPPLEMENTARY INFORMATION: Sections 182, 224, and 225 of Title 13, United States Code (U.S.C.), authorize the Census Bureau to undertake surveys necessary to furnish current data on the subjects covered by the major censuses. Years that end in 2 and 7 are considered “census years.” In non-census years, companies report only on basic company affiliation and operations of establishments not within the scope of the economic censuses. In these non-census years, all multi-establishment companies with 250 or more employees report survey information. Also, groups of smaller companies that are divided into panels may be selected to report information for one of the non-census years. Smaller companies may be selected if an organizational change within the company is indicated, or if they have been selected through the probability sampling procedure. The next economic census will be conducted for the year 2017. The data collected in the Company Organization Survey will be within the general scope, type, and character of those that are covered in the economic censuses. Forms NC–99001 (for multi-establishment companies) and NC–99007 (for single-location companies) will be used to collect the desired data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of

information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the Paperwork Reduction Act, 44 U.S.C., Chapter 35, the OMB approved Forms NC-99001 and NC-99007 under OMB Control Number 0607-0444. We will furnish report forms to organizations included in the survey, and additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233-0101.

I have, therefore, directed that the 2013 Company Organization Survey be conducted for the purpose of collecting these data.

Dated: October 23, 2013.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2013-25604 Filed 10-29-13; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 130925831-3831-01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of determination.

SUMMARY: The United States Department of Commerce's Bureau of the Census (Census Bureau) publishes this notice to announce that the Director of the Census Bureau has determined the need to conduct the 2013 Annual Retail Trade Survey (ARTS). ARTS covers employer firms with establishments located in the United States and classified in the Retail Trade and/or Accommodation and Food Services sectors as defined by the 2007 North American Industry Classification System (NAICS). Through this survey, the Census Bureau will collect data covering annual sales, annual e-commerce sales, year-end inventories held inside and outside the United States, total operating expenses, purchases, accounts receivables, and, for selected industries, merchandise line sales. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. Results will be available for use for a variety of public and business needs such as economic and market analysis, company performance, and forecasting future demand. The Census Bureau conducts the ARTS to provide continuing and timely national statistical data on retail trade, and accommodation and food services activity annually.

ADDRESSES: The Census Bureau will provide report forms to businesses included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233-0101.

FOR FURTHER INFORMATION CONTACT:

Aneta Erdie, Service Sector Statistics Division, at (301) 763-4841 or by email at <aneta.erdie@census.gov>

SUPPLEMENTARY INFORMATION: Sections 182, 224, and 225 of Title 13 of the United States Code (U.S.C.) authorize the Census Bureau to take surveys that are necessary to produce current data on the subjects covered by the major censuses. As part of this authorization, the Census Bureau conducts the ARTS to provide continuing and timely national statistical data on retail trade, and accommodation and food services activity for the period between economic censuses. ARTS is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). ARTS covers employer firms with establishments located in the United States and classified in the Retail Trade and/or Accommodation and Food Services sectors as defined by the 2007 North American Industry Classification System (NAICS). ARTS provides, on a comparable classification basis, annual sales, annual e-commerce sales, year-end inventories held inside and outside the United States, total operating expenses, purchases, accounts receivables, and, for selected industries, merchandise line sales for 2013. The Census Bureau has determined that the conduct of this survey is necessary because these data are not available publicly on a timely basis from any other sources.

Firms are selected for the ARTS survey using a stratified random sample based on industry groupings and annual sales size. We will provide report forms to the firms covered by this survey in February 2014, and will require their responses within 50 days after receipt. Firms' responses to the ARTS survey are required by law (Title 13 U.S.C. Sections 182, 224, and 225). The sample of firms selected will provide, with measurable reliability, statistics on annual sales, annual e-commerce sales, year-end inventories held inside and outside the United States, total operating expenses, purchases, accounts receivables, and, for selected industries, merchandise line sales for 2013.

The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. These data are collected to provide a sound statistical

basis for the formation of policy by various government agencies. Results will be available for use for a variety of public and business needs including economic and market analysis, company performance, and forecasting future demand.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. 3501-3521, OMB has approved the Annual Retail Trade Survey under OMB Control Number 0607-0013.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: October 23, 2013.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2013-25610 Filed 10-29-13; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1918]

Approval of Expansion of Subzone 99E, Delaware City Refining Company LLC, New Castle County, Delaware

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the State of Delaware (grantee of FTZ 99), through the Delaware Economic Development Office, has made application to the Board to expand Subzone 99E at the facilities of Delaware City Refining Company LLC, located in New Castle County, Delaware (FTZ Docket B-38-2013, docketed 04-26-2013);

Whereas, notice inviting public comment has been given in the **Federal Register** (78 FR 25698-25699, 05-02-13) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 99E

at the facilities of the Delaware City Refining Company LLC, located in New Castle County, Delaware, as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 30th day of September 2013.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013-25257 Filed 10-29-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Initiation of Changed Circumstances Review

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received information sufficient to warrant initiation of a changed circumstances review of the antidumping duty order on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC"). Specifically, based upon a request filed by Shandong Linglong Tyre Co., Ltd. ("Shandong Linglong"), an exporter to the United States of subject merchandise, the Department is initiating a changed circumstances review to determine whether Shandong Linglong is the successor-in-interest to Zhaoyuan Leo Rubber Co., Ltd. ("Leo Rubber"), a separate-rate respondent in the original investigation.

DATES: *Effective:* October 30, 2013.

FOR FURTHER INFORMATION CONTACT:

Andrew Medley or Eugene Degnan, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: 202-482-4987 or 202-482-0414, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2008, the Department published in the **Federal Register** an antidumping duty order on

OTR tires from the PRC.¹ Under the *Order*, Leo Rubber received the separate-rate respondent amended rate of 12.91 percent.²

On August 26, 2013, Shandong Linglong filed a submission requesting that the Department conduct a changed circumstances review of the *Order* to confirm that Shandong Linglong is the successor-in-interest to Leo Rubber. In its submission, Shandong Linglong provided a board of directors resolution authorizing the change of company name; a notice from the Yantai City Administration for Industry and Commerce approving the name change from Leo Rubber to Shandong Linglong; business licenses for Leo Rubber and Shandong Linglong, before and after the name change, respectively; legal structure charts and company management before and after the name change; and a list of suppliers before and after the name change.³

Scope of the Order

The merchandise covered by this *Order* includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions.⁴ The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. The HTSUS subheadings are provided for

¹ See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 73 FR 51624 (September 4, 2008) ("Order").

² On August 30, 2012, the Department published in the **Federal Register** a final determination, under section 129 of the Uruguay Round Agreements Act ("URAA"), regarding the antidumping duty investigation on OTR Tires from the PRC. See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China*, 77 FR 52683 (August 30, 2012). As part the Department's final determination under section 129 of the URAA, Leo Rubber was assigned a revised cash deposit rate of 12.83 percent. *Id.*, 77 FR at 51627.

³ See Letter from Shandong Linglong to the Department regarding New Pneumatic Off-The-Road Tires from the People's Republic of China: Request for Changed Circumstances Review (August 26, 2013).

⁴ For a complete description of the Scope of the Order, see *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review; 2011-2012*, 78 FR 33341 (June 4, 2013), and accompanying Issues and Decision Memorandum at "Scope".

convenience and customs purposes only; the written product description of the scope of the order is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended ("the Act"), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from, an interested party for a review of an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In the event that the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with 19 CFR 351.216(d), the Department has determined that the information submitted by Shandong Linglong constitutes sufficient evidence to conduct a changed circumstances review. In an antidumping duty changed circumstances review involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.⁵ While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company.⁶ Thus, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor.⁷

Based on the information provided in its submission, Shandong Linglong has provided sufficient evidence to warrant a review to determine if it is the successor-in-interest to Leo Rubber. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), we

⁵ See, e.g., *Certain Activated Carbon From the People's Republic of China: Notice of Initiation of Changed Circumstances Review*, 74 FR 19934, 19935 (April 30, 2009).

⁶ See, e.g., *Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India*, 71 FR 327 (January 4, 2006).

⁷ See, e.g., *Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

are initiating a changed circumstances review.⁸ However, the Department finds it necessary to issue a questionnaire requesting additional information for the review as provided for by 19 CFR 351.221(b)(2). For that reason, the Department is not conducting this review on an expedited basis by publishing preliminary results in conjunction with this notice of initiation. The Department will publish in the **Federal Register** a notice of the preliminary results of the antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4), and 19 CFR 351.221(c)(3)(i). That notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated, or not later than 45 days if all parties to the proceeding agree to the outcome of the review.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216(b) and 351.221(b)(1).

Dated: October 24, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013-25821 Filed 10-29-13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-853]

Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review; 2011-2012

AGENCY: Enforcement and Compliance, formerly Import Administration,

International Trade Administration, Department of Commerce.

SUMMARY: On June 7, 2013, the Department of Commerce (the Department) published the preliminary results of the third administrative review of the antidumping duty order on citric acid and certain citrate salts from Canada.¹ The review covers one producer and exporter of the subject merchandise, Jungbunzlauer Canada Inc. (JBL Canada). The period of review (POR) is May 1, 2011, through April 30, 2012.

Based on our analysis of the comments received, we have made no changes to our calculations. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margin for JBL Canada is listed below in the "Final Results of Review" section of this notice.

DATES: *Effective:* October 30, 2013.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482-4007 or (202) 482-4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers one producer and exporter of the subject merchandise, JBL Canada. On June 7, 2013, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on citric acid and certain citrate salts from Canada. We invited parties to comment on the preliminary results of the review. In July 2013, we received case and rebuttal briefs from Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC (collectively, the petitioners) and JBL Canada. On July 8, 2013, the petitioners requested that the Department conduct a hearing in this review. On August 1, 2013, the petitioners withdrew their hearing request. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by this order is citric acid and certain citrate salts. The product is currently classified in the Harmonized Tariff Schedule of

the United States (HTSUS) at item numbers 2918.14.0000 and 2918.15.1000, 2918.15.5000 and 3824.90.9290. Although the HTSUS numbers are provided for convenience and customs purposes, the full written scope description, as published in the antidumping duty order² and described in the memorandum entitled "Issues and Decision Memorandum for the Final Results of the 2011-2012 Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from Canada" (Issues and Decision Memorandum), remains dispositive.

Period of Review

The POR is May 1, 2011, through April 30, 2012.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the memorandum entitled, "Issues and Decision Memorandum for the Final Results of the 2011-2012 Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from Canada" (Issues and Decision Memo), which is dated concurrently with, and adopted by, this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memo is attached to this notice as Appendix I. The Issues and Decision Memo is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memo can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed Issues and Decision Memo and the electronic version of the Issues and Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results*, we have made no changes to our calculations. Therefore, the final results do not differ from the preliminary results.

⁸ As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013). Therefore, the deadline for the initiation of this changed circumstances review has been extended by 16 days; the revised deadline is now October 28, 2013.

¹ See *Citric Acid and Certain Citrate Salts from Canada: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 34338 (June 7, 2013) (*Preliminary Results*).

² *Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders*, 74 FR 25703 (May 29, 2009) (*Citric Acid Duty Orders*).

Final Results of the Review

We determine that a weighted-average dumping margin of 1.20 percent exists for entries of subject merchandise that were produced and/or exported by JBL Canada and that entered, or were withdrawn from warehouse, for consumption during the period May 1, 2011, through April 30, 2012.

Assessment Rates

Pursuant to 19 CFR 351.212(b)(1), the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with the final results of this review.³ Pursuant to 19 CFR 356.8(a), the Department intends to issue appropriate appraisement instructions for the respondent subject to this review directly to CBP 41 days after the date of publication of the final results of this review.

As we stated in the *Preliminary Results*, we determined it is appropriate to calculate importer-specific per-unit duty assessment rates.⁴ We calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the per-unit duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(1), we calculated customer-specific *ad valorem* ratios based on the estimated entered value.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its “automatic assessment” regulation on May 6, 2003. *See Antidumping and*

Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by JBL Canada for which it did not know that the merchandise it sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for JBL Canada will be that established in the final results of this review, (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 23.21 percent, the all-others rate made effective by the LTFV investigation. *See Citric Acid Duty Orders*, 74 FR 25703. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

In accordance with 19 CFR 351.305(a)(3), this notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Tolling of Deadlines

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. *See Memorandum for the Record* from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government” (October 18, 2013). Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department’s practice, the deadline will become the next business day. The revised deadline for the final results of this review is now October 23, 2013.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 23, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

1. Price Adjustment of a Business Proprietary Nature for Certain Constructed Export Price Sales
2. Allocation of U.S. Indirect Selling Expenses
3. Calculation of Home Market Indirect Selling Expenses

[FR Doc. 2013-25818 Filed 10-29-13; 8:45 am]

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³ In these final results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

⁴ *See Preliminary Results*, 78 FR at 34339.

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before November 19, 2013. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 13–034. Applicant: University of Minnesota—Twin Cities, 421 Washington Avenue SE., Minneapolis, MN 55455. Instrument: Diode-Pumped Solid-State Femtosecond Laser. Manufacturer: Light Conversion, Lithuania. Intended Use: The instrument will be used to study non-equilibrium materials processes ranging spatially from the atomic-scale up to micrometers and temporally from femtoseconds to seconds, including thermal transport, energy conversion (e.g., light to heat), crystallization, melting, phase transformations, fracture, and other dynamic events. The unique characteristics of the instrument required for the research objectives include a variable repetition rate from single-shot to 1 MHz controlled with TTL input for external triggering or via computer interface, 0.2 mJ/pulse (<30 kHz), 6 Watts at 1 MHz, collinear output from a harmonics module of fundamental (1030 nm), second harmonic (515 nm), and third harmonic (343 nm) with additional optics for operation at low and high repetition rates. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 30, 2013.

Docket Number: 13–036. Applicant: UChicago Argonne, 9700 South Cass Avenue, Lemont, IL 60439. Instrument: High pressure crystal growth furnace with Siemens programmable logic controller. Manufacturer: SCIDRE—Scientific Instruments, Germany.

Intended Use: The instrument will be used to create transition metal oxides, including oxides of iron, manganese, copper, cobalt, vanadium, iridium, ruthenium, rhenium, titanium, nickel, and zinc. It will also be used to grow crystals of intermetallic phases, which are non-oxides of these same transition metals, alloyed with lanthanide metals and/or main group metals (e.g., Al, Si, Bi). These materials will be created to understand a variety of physical phenomena including superconductivity, metal-insulator transitions, and magnetism. With the crystals grown on the instrument, a variety of tests will be performed including magnetic measurements, structural determination by x-ray or neutron scattering, and electrical transport. The unique characteristics of this instrument required for the research objectives include operation at pressures of oxygen or inert gases up to 150 atm, measurement of image zone using pyrometric probes, and cleansing of inert gas stream to better than 10^{-12} ppm oxygen with monitoring during process. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 19, 2013.

Docket Number: 13–037. Applicant: Georgia Health Sciences University, 1120 15th Street, Augusta, GA 30912. Instrument: Imaging System/Digital Microscope & Accessories. Manufacturer: Till Photonics, Germany. Intended Use: The instrument will be used for fluorescence imaging of cellular organelles and calcium flux, photo-activation and photo-bleaching fluorescent proteins to study cellular organelles (mitochondria) and intracellular ion flux. The unique characteristics of the instrument include fast wavelength change, a dichromotome system, and two different light sources that are incorporated and readily switchable, incorporated into a single unit of a wide field fluorescence microscope. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 22, 2013.

Dated: October 22, 2013.

Gregory W. Campbell,

Director of Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2013–25599 Filed 10–29–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011

AGENCY: Enforcement and Compliance (Formerly Import Administration), International Trade Administration, Department of Commerce.

SUMMARY: On April 9, 2013, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty (CVD) order on circular welded carbon steel pipes and tubes (steel pipes and tubes) from Turkey for the January 1, 2011, through December 31, 2011, period of review (POR).¹ The Department preliminarily found that the following producers/exporters of subject merchandise covered by this review had *de minimis* net subsidy rates for the POR: (1) Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, Borusan); (2) Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan AS) and Erbosan Erciyas Pipe Industry and Trade Co. Kayseri Free Zone Branch (Erbosan FZB), (collectively Erbosan), and (3) Tosyali dis Ticaret A.S. (Tosyali) and Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Profil), (collectively, Toscelik). The Department has now completed the administrative review in accordance with section 751(a) of the Tariff of 1930, as amended (the Act). Based on our analysis of comments received, the net subsidy rates for Borusan and Erbosan, although revised, continue to be *de minimis*. The Department has also revised the net subsidy rate for Toscelik. Further discussion of our analysis of the comments received is provided in the accompanying Final Decision Memorandum.² The final net subsidy rates for Borusan, Erbosan, and Toscelik

¹ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 21107 (April 9, 2013) (*Preliminary Results*).

² See Decision Memorandum for Final Results of Countervailing Duty (CVD) Administrative Review: *Circular Welded Carbon Steel Pipes and Tubes from Turkey* from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance dated concurrently with these final results (Final Decision Memorandum).

are listed below in the “Final Results of Review” section.

DATES: *Effective:* October 30, 2013.

FOR FURTHER INFORMATION CONTACT:

Jolanta Lawska at 202–482–8362 (for Borusan and Erbosan) at 202–482–8362 and John Conniff at 202–482–1009 (for Toscelik), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Background

On March 7, 1986, the Department published in the **Federal Register** the CVD order on steel pipes and tubes from Turkey.³ On April 9, 2013, the Department published in the **Federal Register** the preliminary results for this review. In the *Preliminary Results*, we invited interested parties to submit case briefs commenting on the preliminary results and to request a hearing.⁴ On May 9, 2013, we received case briefs from Borusan and Petitioners.⁵ On May 14, 2013, we received a rebuttal brief from Toscelik. We did not hold a hearing in this review, as none was requested by interested parties.

Scope of Order

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Final Decision Memorandum, dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Final Decision Memorandum, is attached to this notice as an Appendix. The Final Decision Memorandum is a public document and is on file

electronically via IA ACCESS. IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly on the Internet at <http://enforcement.ita.doc.gov/frn/index.html>. The signed Final Decision Memorandum and the electronic versions of the Final Decision Memorandum are identical in content.

Final Results of Review

Consistent with the *Preliminary Results*, the total net subsidy rate for Erbosan remained 0.30 percent *ad valorem*. In these final results, we have revised Borusan's total net subsidy rate to 0.19 percent *ad valorem*. Pursuant to 19 CFR 351.106(c), the calculated rates for Erbosan and Borusan are *de minimis*. We have also revised the net subsidy rate for Toscelik. In these final results, we have calculated a total net subsidy rate of 0.83 percent for Toscelik.

Assessment Rates/Cash Deposits

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results, to liquidate shipments of subject merchandise by Borusan and Erbosan entered, or withdrawn from warehouse, for consumption on or after January 1, 2011, through December 31, 2011, without regard to CVDs because a *de minimis* subsidy rate was calculated for each company. We will also instruct CBP to continue to suspend liquidation but to collect no cash deposits of estimated CVDs on shipments of the subject merchandise by Borusan and Erbosan, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

For Toscelik, the Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review to liquidate shipments of subject merchandise by Toscelik entered, or withdrawn from warehouse, for consumption on or after January 1, 2011, through December 31, 2011, at the *ad valorem* assessment rate listed above. We will also instruct CBP to collect cash deposits for Toscelik at the CVD cash deposit rate indicated above on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review.

For all non-reviewed companies, we will instruct CBP to continue to collect

cash deposits at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. The cash deposit rates for all companies not covered by this review are not changed by the results of this review, and remain in effect until further notice.

Return or Destruction of Proprietary Information

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 23, 2013.

Paul Piguado,

Assistant Secretary for Enforcement and Compliance.

Appendix

I. Methodology and Background Information

Subsidies Valuation Information

- A. Attribution of Subsidies
- B. Benchmark Interest Rates

II. Analysis of Programs

I. Programs Determined To Be Countervailable

- A. Deduction from Taxable Income for Export Revenue
- B. Short Term Pre-Shipment Rediscount Program
- C. Law 5084: Withholding of Income Tax on Wages and Salaries
- D. Law 5084: Incentive for Employers' Share in Insurance Premiums
- E. Law 5084: Allocation of Free Land and Purchase of Land for Less Than Adequate Remuneration (LTAR)
- F. Law 5084: Energy Support
- G. Organized Industrial Zone (OIZ): Exemption From Property Tax
- H. Corporate Income Tax Exemption Under the Free Zones Law
- I. *Investment Encouragement Program (IEP): Customs Duty Exemptions*

II. Programs Determined To Not Confer Countervailable Benefits During the POR

- A. Inward Processing Certificate Exemption
- B. Provision of Buildings and Land Use Rights for LTAR Under the Free Zones Law

³ See *Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products From Turkey*, 51 FR 7984 (March 7, 1986).

⁴ See *Preliminary Results*.

⁵ Petitioners in this review are Wheatland Tube Company (Wheatland), Allied Tube and Conduit Corporation and TMK IPSCO, and United States Steel Corporation (collectively, Petitioners).

III. *Programs Found Not Countervailable During the POR*

- A. Deductions on Social Security Payments Program Under Law 5510
- B. Deductions on Social Security Payments Program Under Law 5921
- C. Customs Duties and Value-Added Tax (VAT) Exemptions Under the Free Zones Law

IV. *Programs Determined To Not Be Used During the POR*

- A. Stamp Duties and Fees Exemptions Under the Free Zones Law
- B. Other Programs Not Used
 - Post-Shipment Export Loans
 - Export Credit Bank of Turkey Buyer Credits
 - Subsidized Turkish Lira Credit Facilities
 - Subsidized Credit for Proportion of Fixed Expenditures
 - Subsidized Credit in Foreign Currency
 - Regional Subsidies
 - VAT Support Program (Incentive Premium on Domestically Obtained Goods)
 - IEP: VAT Exemptions
 - IEP: Reductions in Corporate Taxes
 - IEP: Interest Support
 - IEP: Social Security Premium Support
 - IEP: Land Allocation
 - National Restructuring Program
 - Regional Incentive Scheme: Reduced Corporate Tax Rates
 - Regional Incentive Scheme: Social Security Premium Contribution for Employees
 - Regional Incentive Scheme: Allocation of State Land
 - Regional Incentive Scheme: Interest Support
 - OIZ: Waste Water Charges
 - OIZ: Exemptions From Customs Duties, VAT, and Payments for Public Housing Fund, for Investments for Which an Income Certificate Is Received
 - OIZ: Credits for Research and Development Investments, Certain Technology Investments, Certain "Regional Development" Investments, and Investments Moved From Developed Regions to "Regions of Special Purpose"
 - Foreign Trade Companies Short Term Export Credits
 - Pre-Export Credits
 - Pre-shipment Export Credits
 - OIZ: Exemption From Building and Construction Charges
 - OIZ: Exemption From Amalgamation and Allotment Transaction Charges

Analysis of Comments

Borusan

Comment 1: Whether the Department Should Grant an Offset to the Gross Subsidy Found on Turkish Eximbank Loans for the Bank Guarantee Fees

Comment 2: Whether the Department Erred in Including Certain Eximbank Loans in the Department's Preliminary Benefit Calculations

Erbosan

Comment 3: Whether the Department Should Find Provision of Buildings and Land Use Rights for Less than Adequate

Remuneration under the Free Zones Law Program Countervailable

Toscelik

Comment 4: Benchmark Used to Calculate the Benefit under the Osmaniye Organized Industrial Zone Program Used by Toscelik
 Comment 5: Treatment of Investment Encouragement Program (IEP)

[FR Doc. 2013-25816 Filed 10-29-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Interagency Ocean Observation Committee, Meeting of the Data Management and Communications Steering Team

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: NOAA's Integrated Ocean Observing System (IOOS®) Program publishes this notice on behalf of the Interagency Ocean Observation Committee (IOOC) to announce a formal meeting of the IOOC's Data Management and Communications Steering Team (DMAC-ST). The DMAC-ST membership is comprised of IOOC-approved federal agency representatives and non-federal participants representing academic, non-profit, private, regional and state sectors who will discuss issues outlined in the agenda.

DATES: The meeting is scheduled for November 19, 2013, between 9 a.m. and 5 p.m. and November 20, 2013, between 9 a.m. and noon, Eastern Standard Time.

ADDRESSES: The meeting will be broadcast via a conference telephone call. Public access is available at the Consortium for Ocean Leadership, 1201 New York Avenue NW., 4th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: For further information about this notice, please contact the U.S. IOOS Program (Charles Alexander, 301-427-2429, Charles.Alexander@noaa.gov) or the IOOC Support Office (Joshua Young, 202-787-1622, jyoung@oceanleadership.org).

SUPPLEMENTARY INFORMATION: The IOOC was established by Congress under the Integrated Coastal and Ocean Observation System Act of 2009 and created under the National Ocean Research Leadership Council (NORLC).

The DMAC-ST was subsequently chartered by the IOOC in December 2010 to assist with technical guidance with respect to the management of ocean data collected under the U.S. IOOS®. The IOOC's Web site (<http://www.iooc.us/>) contains more information about their charter and responsibilities. A summary of the DMAC-ST meetings, documentations, activities and terms of reference can also be found on-line, at the following address: <http://www.iooc.us/committee-news/dmac>.

Authority: 33 U.S.C. 3601-3610.

Dated: October 21, 2013.

Zdenka S. Willis,

Director, Integrated Ocean Observing System Program.

[FR Doc. 2013-25706 Filed 10-29-13; 8:45 am]

BILLING CODE 3510-JE-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC893

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys Along the Oregon and California Coasts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Partnership for Interdisciplinary Study of Coastal Oceans (PISCO) at the University of California (UC) Santa Cruz for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to rocky intertidal monitoring surveys. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to PISCO to incidentally take, by Level B harassment only, marine mammals during the specified activity.

DATES: Comments and information must be received no later than November 29, 2013.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The

mailbox address for providing email comments is ITP.Nachman@noaa.gov. NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the application containing a list of the references used in this document and associated Environmental Assessment (EA) may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. PISCO's 2012–2013 monitoring report can also be found at this Web site. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking, other means of effecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “. . . an impact resulting

from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: “any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].”

Summary of Request

On July 10, 2013, NMFS received an application from PISCO for the taking of marine mammals incidental to rocky intertidal monitoring surveys along the Oregon and California coasts. NMFS determined that the application was adequate and complete on July 31, 2013. In December 2012, NMFS issued a 1-year IHA to PISCO to take marine mammals incidental to these same proposed activities (77 FR 72327, December 5, 2012). This IHA will expire on December 2, 2013.

The research group at UC Santa Cruz operates in collaboration with two large-scale marine research programs: PISCO and the Multi-agency Rocky Intertidal Network. The research group at UC Santa Cruz (PISCO) is responsible for many of the ongoing rocky intertidal monitoring programs along the Pacific coast. Monitoring occurs at rocky intertidal sites, often large bedrock benches, from the high intertidal to the water's edge. Long-term monitoring projects include Community Structure Monitoring, Intertidal Biodiversity Surveys, Marine Protected Area Baseline Monitoring, Intertidal Recruitment Monitoring, and Ocean Acidification. Research is conducted throughout the year along the California and Oregon coasts and will continue indefinitely. Most sites are sampled one

to two times per year over a 4–6 hour period during a negative low tide series. This IHA, if issued, though, would only be effective for a 12-month period from the date of its issuance. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: presence of survey personnel near pinniped haulout sites and approach of survey personnel towards hauled out pinnipeds. Take, by Level B harassment only, of individuals of three species of marine mammals is anticipated to result from the specified activity.

Description of the Specified Activity and Specified Geographic Region

PISCO focuses on understanding the nearshore ecosystems of the U.S. west coast through a number of interdisciplinary collaborations. PISCO integrates long-term monitoring of ecological and oceanographic processes at dozens of sites with experimental work in the lab and field. A short description of each project is contained here. Additional information can be found in PISCO's application (see **ADDRESSES**).

Community Structure Monitoring involves the use of permanent photoplot quadrats which target specific algal and invertebrate assemblages (e.g. mussels, rockweeds, barnacles). Each photoplot is photographed and scored for percent cover. The Community Structure Monitoring approach is based largely on surveys that quantify the percent cover and distribution of algae and invertebrates that constitute these communities. This approach allows researchers to quantify both the patterns of abundance of targeted species, as well as characterize changes in the communities in which they reside. Such information provides managers with insight into the causes and consequences of changes in species abundance. Each Community Structure site is surveyed over a 1-day period during a low tide series one to two times a year. Sites, location, number of times sampled per year, and typical sampling months for each site are presented in Table 1 in PISCO's application (see **ADDRESSES**).

Biodiversity Surveys, which are part of a long-term monitoring project and are conducted every 3–5 years at established sites, involve point contact identification along permanent transects, mobile invertebrate quadrat counts, sea star band counts, and tidal height topographic measurements. Table 2 in PISCO's application (see **ADDRESSES**) lists established biodiversity sites in Oregon and California. No Biodiversity Surveys are

planned to be conducted during the 12-month period that this proposed IHA would be effective (if issued).

In September 2007, the state of California began establishing a network of Marine Protected Areas along the California coast as part of the Marine Life Protection Act (MLPA). Under baseline monitoring programs funded by Sea Grant and the Ocean Protection Council, PISCO established additional intertidal monitoring sites in the Central Coast (Table 3 in PISCO's application), North Central Coast (Table 4 in PISCO's application), and South Coast (Table 5 in PISCO's application) study regions. Baseline characterization of newly established areas involves sampling of these new sites, as well as established sites both within and outside of marine protected areas. These sites were sampled using existing Community Structure and Biodiversity protocols for consistency. Resampling of newly established sites may take place every 5 years as part of future marine protected area evaluation.

Intertidal recruitment monitoring collects data on invertebrate larval recruitment. Mussel and other bivalve recruits are collected in mesh pot-scrubbers bolted into the substrate. Barnacle recruits and cyprids are collected on PVC plates covered in non-slip tape and bolted to the substrate. Both are collected once a month and processed in the lab. Intertidal recruitment monitoring is currently conducted on a monthly basis at two central California sites: Terrace Point and Hopkins.

The Ocean Margin Ecosystems Group for Acidification Studies is a National Science Foundation funded project that involves research at eight sites along the California Current upwelling system from Southern California into Oregon. PISCO is responsible for research at three of these sites—Hopkins, Terrace Point, and Soberanes—located in the Monterey Bay region of mainland California. The intention of this collaboration is to monitor oceanic pH on large spatial and temporal scales and to determine if any relationship exists between changing ocean chemistry and the state of intertidal calcifying organisms. The project involves field experiments, as well as lab studies. Currently these sites are visited two to three times per month for sampling and equipment maintenance.

During summer 2014, PISCO will sample eight sites along the Oregon coast (see Table 7 in PISCO's application) using a combination of community structure and biodiversity survey methods to establish a baseline prior to the proposed installation of

several wave energy conversion device arrays. This baseline will be used to assess the effects of the arrays on nearshore communities.

Specified Geographic Location and Activity Timeframe

PISCO's research is conducted throughout the year along the California and Oregon coasts. Most sites are sampled one to two times per year over a 1-day period (4–6 hours per site) during a negative low tide series. Due to the large number of research sites, scheduling constraints, the necessity for negative low tides and favorable weather/ocean conditions, exact survey dates are variable and difficult to predict. Table 1 in PISCO's application (see **ADDRESSES**) outlines the typical sampling season for the various locations. Some sampling is anticipated to occur in all months, except for January, August, and September.

The intertidal zones where PISCO conducts intertidal monitoring are also areas where pinnipeds can be found hauled out on the shore at or adjacent to some research sites. Accessing portions of the intertidal habitat may cause incidental Level B (behavioral) harassment of pinnipeds through some unavoidable approaches if pinnipeds are hauled out directly in the study plots or while biologists walk from one location to another. No motorized equipment is involved in conducting these surveys. The species for which Level B harassment is requested are: California sea lions (*Zalophus californianus californianus*); harbor seals (*Phoca vitulina richardii*); and northern elephant seals (*Mirounga angustirostris*).

Description of Marine Mammals in the Area of the Specified Activity

Several pinniped species can be found along the California and Oregon coasts. The three that are most likely to occur at some of the research sites are California sea lion, harbor seal, and northern elephant seal. On rare occasions, PISCO researchers have seen very small numbers (i.e., five or fewer) of Steller sea lions at one of the sampling sites. These sightings are rare. Therefore, encounters are not expected. However, if Steller sea lions are sighted before approaching a sampling site, researchers will abandon approach and return at a later date. For this reason, this species is not considered further in this proposed IHA notice.

We refer the public to Carretta *et al.* (2013) for general information on these species which are presented below this section. The publication is available on the internet at: [http://](http://www.nmfs.noaa.gov/pr/sars/pdf/po2012.pdf)

www.nmfs.noaa.gov/pr/sars/pdf/po2012.pdf. Additional information on the status, distribution, seasonal distribution, and life history can also be found in PISCO's application.

Northern Elephant Seal

Northern elephant seals are not listed as threatened or endangered under the Endangered Species Act (ESA), nor are they categorized as depleted under the MMPA. The estimated population of the California breeding stock is approximately 124,000 animals with a minimum estimate of 74,913 (Carretta *et al.*, 2013).

Northern elephant seals range in the eastern and central North Pacific Ocean, from as far north as Alaska and as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. They are usually underwater, diving to depths of about 330–800 m (1,000–2,500 ft) for 20- to 30-minute intervals with only short breaks at the surface. They are rarely seen out at sea for this reason. While on land, they prefer sandy beaches.

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.*, 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed further south, south of 45° N (Stewart and Huber, 1993; Le Boeuf *et al.*, 1993). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

During PISCO research activities, the maximum number of northern elephant seals observed at a single site was at least 10 adults plus an unknown number of pups. These were observed offshore of Piedras Blancas. A small group of five adult elephant seals and five pups has been observed in the vicinity of our site at Piedras Blancas, and one elephant seal has been observed at Pigeon Point.

California Sea Lion

California sea lions are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The California sea lion is now a full species, separated from the Galapagos sea lion (*Z. wolfebaeki*) and the extinct Japanese sea lion (*Z. japonicus*) (Brunner, 2003; Wolf *et al.*, 2007; Schramm *et al.*, 2009). The estimated population of the U.S. stock of California sea lion is

approximately 296,750 animals with a minimum of 153,337 individuals, and the current maximum population growth rate is 12 percent (Carretta *et al.*, 2013).

California sea lion breeding areas are on islands located in southern California, in western Baja California, Mexico, and the Gulf of California. During the breeding season, most California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta *et al.*, 2011). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where they give birth to a single pup approximately 4–5 days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned between 4 and 10 months of age (NMML, 2010). In central California, a small number of pups are born on Ano Nuevo Island, Southeast Farallon Island, and occasionally at a few other locations; otherwise, the central California population is composed of non-breeders.

A 2005 haul-out count of California sea lions between the Oregon/California border and Point Conception as well as the Channel Islands found 141,842 individuals (Carretta *et al.*, 2010). The number of sea lions found at any one of PISCO's study sites is variable, and often no California sea lions are observed during sampling.

Pacific Harbor Seal

Pacific harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The estimated population of the California stock of Pacific harbor seals is approximately 30,196 animals with a minimum estimated population size of 26,667 (Carretta *et al.*, 2013). No current estimation of annual growth rate has been made for the California stock (Carretta *et al.*, 2013). A 1999 census of the Oregon/Washington harbor seal stock found 16,165 individuals, of which 5,735 were in Oregon (Carretta *et al.*, 2013). This stock is growing at a maximum annual rate of 12% (Carretta *et al.*, 2013).

The animals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. Pacific harbor seals are divided into two subspecies: *P. v. stejnegeri* in the western North Pacific,

near Japan, and *P. v. richardii* in the northeast Pacific Ocean. The latter subspecies, recognized as three separate stocks, inhabits the west coast of the continental U.S., including: The outer coastal waters of Oregon and Washington states; Washington state inland waters; and Alaska coastal and inland waters.

In California, over 500 harbor seal haulout sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.*, 2005). Harbor seals mate at sea, and females give birth during the spring and summer, although, the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations, and rookery size varies from a few pups to many hundreds of pups. Pupping generally occurs between March and June, and molting occurs between May and July (NCCOS, 2007).

At several sites, harbor seals are often observed and have the potential to be disturbed by researchers accessing or sampling the site. The largest number of harbor seals occurs at Hopkins where often 20–30 adults and 10–15 pups are hauled-out on a small beach adjacent to the sampling site.

Other Marine Mammals in the Proposed Action Area

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the ESA and categorized as depleted under the MMPA, usually range in coastal waters within 2 km (1.2 mi) of shore. This species is managed by the U.S. Fish and Wildlife Service and is not considered further in this notice.

Potential Effects of the Specified Activity on Marine Mammals

The appearance of researchers may have the potential to cause Level B harassment of any pinnipeds hauled out at sampling sites. Although marine mammals are never deliberately approached by abalone survey personnel, approach may be unavoidable if pinnipeds are hauled out in the immediate vicinity of the permanent study plots. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of researchers (e.g., turning the head, assuming a more upright posture) to flushing from the haul-out site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that move greater than 1 m (3.3 ft) or

change the speed or direction of their movement in response to the presence of researchers are behaviorally harassed, and thus subject to Level B taking. Animals that respond to the presence of researchers by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al.*, 1984; Calambokidis *et al.*, 1991; Suryan and Harvey, 1999; Mortenson *et al.*, 2000). The Hawaiian monk seal (*Monachus schauinslandi*) has been shown to avoid beaches that have been disturbed often by humans (Kenyon, 1972). And in one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon, 1962).

Typically, even those reactions constituting Level B harassment would result at most in temporary, short-term disturbance. In any given study season, researchers will visit sites one to two times per year for a total of 4–6 hours per visit. Therefore, disturbance of pinnipeds resulting from the presence of researchers lasts only for short periods of time and is separated by significant amounts of time in which no disturbance occurs. Because such disturbance is sporadic, rather than chronic, and of low intensity, individual marine mammals are unlikely to incur any detrimental impacts to vital rates or ability to forage and, thus, loss of fitness. Correspondingly, even local populations, much less the overall stocks of animals, are extremely unlikely to accrue any significantly detrimental impacts.

There are three ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. All three are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus, an occurrence that is not expected at the proposed sampling sites. The three situations are (1) Falling when entering the water at high-relief locations; (2) extended separation of mothers and pups; and (3) crushing of elephant seal pups by large males during a stampede.

Because hauled-out animals may move towards the water when disturbed, there is the risk of injury if animals stampede towards shorelines with precipitous relief (e.g., cliffs). However, while cliffs do exist along the coast, shoreline habitats near the abalone study sites are of steeply

sloping rocks with unimpeded and non-obstructive access to the water. If disturbed, hauled-out animals in these situations may move toward the water without risk of encountering barriers or hazards that would otherwise prevent them from leaving the area. In these circumstances, the risk of injury, serious injury, or death to hauled-out animals is very low. Thus, abalone research activity poses no risk that disturbed animals may fall and be injured or killed as a result of disturbance at high-relief locations.

The risk of marine mammal injury, serious injury, or mortality associated with rocky intertidal monitoring increases somewhat if disturbances occur during breeding season. These situations present increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury, serious injury, or mortality of the pups. The risk of either of these situations is greater in the event of a stampede.

Very few pups are anticipated to be encountered during the proposed monitoring surveys. No California sea lion pups are anticipated to be encountered, as rookery sites are typically limited to the islands. A very small number of harbor seal and northern elephant seal pups have been observed at a couple of the proposed monitoring sites over the past years. Though elephant seal pups are occasionally present when researchers visit survey sites, risk of pup mortalities is very low because elephant seals are far less reactive to researcher presence than the other two species. Further, pups are typically found on sand beaches, while study sites are located in the rocky intertidal zone, meaning that there is typically a buffer between researchers and pups. Finally, the caution used by researchers in approaching sites generally precludes the possibility of behavior, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of pups. No research would occur where separation of mother and her nursing pup or crushing of pups can become a concern.

In summary, NMFS does not anticipate that the proposed activities would result in the injury, serious injury, or mortality of pinnipeds because pups are only found at a couple of the proposed sampling locations during certain times of the year and that

many rookeries occur on the offshore islands and not the mainland areas where the proposed activities would occur. In addition, researchers will exercise appropriate caution approaching sites, especially when pups are present and will redirect activities when pups are present.

Summary of Previous Monitoring

PISCO complied with the mitigation and monitoring that we required under the IHA issued in December 2012. In compliance with the IHA, PISCO submitted a reporting detailing the activities and marine mammal monitoring they conducted. The IHA required PISCO to conduct counts of pinnipeds present at study sites prior to approaching the sites and to record species counts and any observed reactions to the presence of the researchers.

From December 3, 2012, through August 31, 2013, PISCO researchers conducted rocky intertidal sampling at 73 sites during 79 days. During this time period, no injured, stranded, or dead pinnipeds were observed. Tables 9, 10, and 11 in PISCO's monitoring report (see **ADDRESSES**) outline marine mammal observations and reactions. No takes of northern elephant seals occurred at any of the sites. Level B harassment takes of harbor seals and California sea lions included short movements of 1–3 m (3.3–10 ft) away from researchers and in some instances flushing into the water.

Based on the results from the previous monitoring report, we conclude that these results support our original findings that the mitigation measures set forth in the 2012–2012 IHA effected the least practicable impact on the species or stocks. During periods of low tide (e.g., when tides are 0.6 m (2 ft) or less and low enough for pinnipeds to haul-out), we would expect the pinnipeds to return to the haulout site within 60 minutes of the disturbance (Allen *et al.*, 1985). The effects to pinnipeds appear at the most to displace the animals temporarily from their haul out sites, and we do not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of rocky intertidal surveys.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the “Proposed Mitigation” and “Proposed Monitoring and Reporting” sections) which, as noted, should effect the least practicable impact on affected marine mammal species and stocks.

Anticipated Effects on Marine Mammal Habitat

The only habitat modification associated with the proposed activity is the placement of permanent bolts and other sampling equipment in the intertidal. Bolts are installed during the set-up of a site and, at existing sites, this has already occurred. In some instances, bolts will need to be replaced or installed for new plots. Bolts are 7.6 to 12.7 cm (2 to 5 in) long, stainless steel 1 cm (3/8 in) Hex or Carriage bolts. They are installed by drilling a hole with a battery powered DeWalt 24 volt rotary hammer drill with a 1 cm (3/8 in) bit. The bolts protrude 1.3–7.6 cm (0.5–3 in) above the rock surface and are held in place with marine epoxy. Although the drill does produce noticeable noise, researchers have never observed an instance where near-by or offshore marine mammals were disturbed by it. Any marine mammal at the site would likely be disturbed by the presence of researchers and retreat to a distance where the noise of the drill would not increase the disturbance. In most instances, wind and wave noise also drown out the noise of the drill. The installation of bolts and other sampling equipment is conducted under the appropriate permits (Monterey Bay National Marine Sanctuary, California State Parks). Once a particular study has ended, the respective sampling equipment is removed. No trash or field gear is left at a site. Thus, the proposed activity is not expected to have any habitat-related effects, including to marine mammal prey species, that could cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

PISCO proposes to implement several mitigation measures to reduce potential take by Level B (behavioral disturbance) harassment. Measures include: (1) Conducting slow movements and staying close to the ground to prevent or minimize stampeding; (2) avoiding loud noises (i.e., using hushed voices); (3)

avoiding pinnipeds along access ways to sites by locating and taking a different access way and vacating the area as soon as sampling of the site is completed; (4) monitoring the offshore area for predators (such as killer whales and white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters; (5) using binoculars to detect pinnipeds before close approach to avoid being seen by animals; (6) only flushing pinnipeds if they are located in the sampling plots and there are no other means to accomplish the survey (however, flushing must be done slowly and quietly so as not to cause a stampede); (7) no intentional flushing if pups are present at the sampling site; and (8) rescheduling sampling if Steller sea lions are present at the site.

The methodologies and actions noted in this section will be utilized and included as mitigation measures in any issued IHA to ensure that impacts to marine mammals are mitigated to the lowest level practicable. The primary method of mitigating the risk of disturbance to pinnipeds, which will be in use at all times, is the selection of judicious routes of approach to study sites, avoiding close contact with pinnipeds hauled out on shore, and the use of extreme caution upon approach. In no case will marine mammals be deliberately approached by survey personnel, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals potentially harassed. In general, researchers will stay inshore of pinnipeds whenever possible to allow maximum escape to the ocean. Each visit to a given study site will last for approximately 4–6 hours, after which the site is vacated and can be re-occupied by any marine mammals that may have been disturbed by the presence of researchers. By arriving before low tide, worker presence will tend to encourage pinnipeds to move to other areas for the day before they haul out and settle onto rocks at low tide.

PISCO will suspend sampling and monitoring operations immediately if an injured marine mammal is found in the vicinity of the project area and the monitoring activities could aggravate its condition.

NMFS has carefully evaluated PISCO's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included

consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

PISCO can add to the knowledge of pinnipeds in California and Oregon by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Proposed monitoring requirements in relation to PISCO's rocky intertidal monitoring will include observations made by the applicant. Information recorded will include species counts (with numbers of pups/juveniles when possible), numbers of observed disturbances, and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event. In addition, observations regarding the number and species of any marine mammals observed, either in the water or hauled out, at or adjacent to the site, will be recorded as part of field observations during research activities. Observations

of unusual behaviors, numbers, or distributions of pinnipeds will be reported to NMFS so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to NMFS. Information regarding physical and biological conditions pertaining to a site, as well as the date and time that research was conducted will also be noted.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of any other marine mammal occurs, and such action may be a result of the proposed research, PISCO will suspend research activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

A draft final report must be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the 2013–2014 field season or 60 days prior to the start of the next field season if a new IHA will be requested. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Director of the NMFS Office of Protected Resources and to the NMFS Southwest Office Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, sheltering, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by injury, serious injury, or mortality is considered remote.

Animals hauled out close to the actual survey sites may be disturbed by the presence of biologists and may alter their behavior or attempt to move away from the researchers.

As discussed earlier, NMFS considers an animal to have been harassed if it moved greater than 1 m (3.3 ft) in response to the researcher's presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. Animals that became alert without such movements were not considered harassed.

For the purpose of this proposed IHA, only Oregon and California sites that are frequently sampled and have a marine mammal presence during sampling were included in take estimates. Sites where only Biodiversity Surveys are conducted were not included due to the infrequency of sampling and rarity of occurrences of pinnipeds during sampling. In addition, Steller sea lions are not included in take estimates as they will not be disturbed by researchers or research activities since activities will not occur or will be suspended if Steller sea lions are present. A small number of harbor seal and northern elephant seal pup takes are anticipated as pups may be present at several sites during spring and summer sampling.

Takes estimates are based on marine mammal observations from each site. Marine mammal observations are done as part of PISCO site observations, which include notes on physical and biological conditions at the site. The maximum number of marine mammals, by species, seen at any given time throughout the sampling day is recorded at the conclusion of sampling. A marine mammal is counted if it is seen on access ways to the site, at the site, or immediately up-coast or down-coast of the site. Marine mammals in the water immediately offshore are also recorded. Any other relevant information, including the location of a marine mammal relevant to the site, any unusual behavior, and the presence of pups is also noted.

These observations formed the basis from which researchers with extensive knowledge and experience at each site

estimated the actual number of marine mammals that may be subject to take. In most cases the number of takes is based on the maximum number of marine mammals that have been observed at a site throughout the history of the site (2–3 observation per year for 5–10 years or more). Section 6 in PISCO's application outlines the number of visits per year for each sampling site and the potential number of pinnipeds anticipated to be encountered at each site. Table 8 in PISCO's application outlines the number of potential takes per site (see **ADDRESSES**).

Based on this information, NMFS proposes to authorize the take, by Level B harassment only, of 60 California sea lions, 337 harbor seals, and 36 northern elephant seals. These numbers are considered to be maximum take estimates; therefore, actual take may be slightly less if animals decide to haul out at a different location for the day or animals are out foraging at the time of the survey activities.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS typically includes our negligible impact and small numbers analyses and determinations under the same section heading of our **Federal Register** notices. Despite co-locating these terms, we acknowledge that negligible impact and small numbers are distinct standards under the MMPA and treat them as such. The analyses presented below do not conflate the two standards; instead, each standard has been considered independently, and we have applied the relevant factors to inform our negligible impact and small numbers determinations.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "... an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3)

the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

No injuries or mortalities are anticipated to occur as a result of PISCO's rocky intertidal monitoring, and none are proposed to be authorized. The behavioral harassments that could occur would be of limited duration, as researchers only conduct sampling one to two times per year at each site for a total of 4–6 hours per sampling event. Therefore, disturbance will be limited to a short duration, allowing pinnipeds to reoccupy the sites within a short amount of time.

Some of the pinniped species may use some of the sites during certain times of year to conduct pupping and/or breeding. However, some of these species prefer to use the offshore islands for these activities. At the sites where pups may be present, PISCO has proposed to implement certain mitigation measures, such as no intentional flushing if dependent pups are present, which will avoid mother/pup separation and trampling of pups.

Of the three marine mammal species anticipated to occur in the proposed activity areas, none are listed under the ESA. Table 1 in this document presents the abundance of each species or stock, the proposed take estimates, and the percentage of the affected populations or stocks that may be taken by harassment. Based on these estimates, PISCO would take less than 2.1% of each species or stock. Because these are maximum estimates, actual take numbers are likely to be lower, as some animals may select other haulout sites the day the researchers are present.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS preliminarily finds that the rocky intertidal monitoring program will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the rocky intertidal monitoring program will have a negligible impact on the affected species or stocks.

TABLE 1—POPULATION ABUNDANCE ESTIMATES, TOTAL PROPOSED LEVEL B TAKE, AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN FOR THE POTENTIALLY AFFECTED SPECIES DURING THE PROPOSED ROCKY INTERTIDAL MONITORING PROGRAM

Species	Abundance *	Total proposed Level B take	Percentage of stock or population
Harbor Seal	¹ 30,196 ² 16,165	337	1.1–2.1

TABLE 1—POPULATION ABUNDANCE ESTIMATES, TOTAL PROPOSED LEVEL B TAKE, AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN FOR THE POTENTIALLY AFFECTED SPECIES DURING THE PROPOSED ROCKY INTERTIDAL MONITORING PROGRAM—Continued

Species	Abundance *	Total proposed Level B take	Percentage of stock or population
California Sea Lion	296,750	60	0.02
Northern Elephant Seal	124,000	36	0.03

* Abundance estimates are taken from the 2012 U.S. Pacific Marine Mammal Stock Assessments (Carretta *et al.*, 2013).

¹ California stock abundance estimate;

² Oregon/Washington stock abundance estimate.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

None of the marine mammals for which incidental take is proposed are listed as threatened or endangered under the ESA. NMFS' Permits and Conservation Division worked with the NMFS Southwest Regional Office to ensure that Steller sea lions would be avoided and incidental take would not occur. Therefore, NMFS has determined that issuance of the proposed IHA to PISCO under section 101(a)(5)(D) of the MMPA will have no effect on species listed as threatened or endangered under the ESA.

National Environmental Policy Act (NEPA)

In 2012, we prepared an EA analyzing the potential effects to the human environment from conducting rocky intertidal surveys along the California and Oregon coasts and issued a Finding of No Significant Impact (FONSI) on the issuance of an IHA for PISCO's rocky intertidal surveys in accordance with section 6.01 of the NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). PISCO's proposed activities and impacts for 2013-2014 are within the scope of our 2012 EA and FONSI. We have reviewed the 2012 EA and determined that there are no new direct, indirect, or cumulative impacts to the human and natural environment associated with the IHA requiring evaluation in a supplemental EA and we, therefore, intend to reaffirm the 2012 FONSI.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to PISCO's rocky intertidal monitoring research activities, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 25, 2013.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2013-25717 Filed 10-29-13; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO-P-2013-0011]

Request for Comments on Proposed Elimination of Patents Search Templates

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The USPTO is proposing to eliminate the Patents Search Templates from the USPTO Web site. In 2006, the United States Patent and Trademark Office (USPTO) implemented Patents Search Templates, which are United States Patent Classification (USPC) indexed search templates that were created to better identify the field of search, search tools, and search methodologies which should be considered each time an invention related to a particular USPC is searched. There are over 1200 search templates covering more than 600 USPC classes and subclasses. Historically, usage of the search templates by the public has been extremely low. Additionally, various aspects of the search templates, such as references to commercial database vendor information, are in need of updating. Further, the USPTO launched a new classification system,

the Cooperative Patent Classification (CPC) system, in January 2013 that is based on the International Patent Classification (IPC) system. The CPC, a joint patent classification system developed by the USPTO and the European Patent Office (EPO), incorporates the best classification practices of both the U.S. and European systems. Since CPC is a detailed, collaborative, and dynamic system that will enable patent examiners and the public to efficiently conduct thorough patent searches, the search templates will become obsolete. Before eliminating the search templates from the USPTO Web site, the Office is requesting comments from the public.

DATES: *Comment Deadline Date:* Written comments must be received on or before November 29, 2013 to ensure consideration. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *SearchTemplates RFC@uspto.gov*. Comments may also be submitted by postal mail addressed to: United States Patent and Trademark Office, Mail Stop Comments—Patents, Office of Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Pinchus M. Laufer. Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet in order to facilitate posting on the Office's Internet Web site.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located at Madison Building East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (<http://www.uspto.gov>). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Pinchus M. Laufer, Senior Legal

Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at 571-272-7726; or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

SUPPLEMENTARY INFORMATION: The USPTO published a notice for a request for comments on the search templates on May 16, 2006. *See Request for Comments on Patents Search Templates*, 94 FR 28309 (May 16, 2006). The search templates were created to better identify the field of search, search tools, and search methodologies which should be considered each time an invention related to a particular USPC is searched.

The USPTO is proposing to remove the search templates from its Web site. The search templates are currently out-of-date since they include, for example, outdated commercial database vendor information that could be misleading for external stakeholders. Also, the search templates are indexed under USPC, which will no longer be used. Updating the search templates, which would require the editing of over 1200 pages, would not be an efficient use of USPTO resources since the templates are rarely used by the public. Additionally, CPC, the new internationally compatible classification system, was launched in January 2013. CPC is a detailed, dynamic classification system that is based on the IPC and enables patent examiners and the public to efficiently conduct thorough patent searches. As a result of the implementation of the CPC, the search templates will become obsolete. CPC has been jointly developed with the EPO and incorporates the best classification practices of both the U.S. and European systems. The USPTO and the EPO also believe that CPC will enhance efficiency and support work sharing initiatives with a view to reducing unnecessary duplication of work, thereby leading to enhanced patent quality and timelier examination of pending applications. Initial feedback from stakeholders confirms that the transition to CPC is a positive development. More information about CPC can be found at <http://www.cooperativepatentclassification.org>.

Due to the factors discussed above, the Office is proposing the removal of the search templates from the USPTO Web site. Notice and opportunity for public comment are not required prior to removal of the search templates. The Office, however, is publishing this notice for comment as it seeks the

benefit of the public's views on the Office's proposed removal of the search templates. If, after consideration of the comments, the Office goes forward with the elimination of the search templates, a notice to that effect will be published, and any references to the search templates in USPTO documentation (for example, in the Accelerated Examination FAQs) will be updated.

Dated: October 23, 2013.

Teresa Stanek Rea,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2013-25685 Filed 10-29-13; 8:45 am]

BILLING CODE 3510-16-P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 21 November 2013, at 9:00 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington DC, 20001-2728. Items of discussion may include buildings, parks, and memorials. Draft agendas and additional information regarding the Commission are available on our Web site: www.cfa.gov. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing CFStaff@cfa.gov; or by calling 202-504-2000. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: October 22, 2013, in Washington DC.

Thomas Luebke,
AIA, Secretary.

[FR Doc. 2013-25509 Filed 10-29-13; 8:45 am]

BILLING CODE 6331-01-M

DEPARTMENT OF EDUCATION

[Docket No. ED-2013-ICCD-0133]

Agency Information Collection Activities; Comment Request: Survey of Principals of Rural Schools Receiving School Improvement Grants and Using the Transformation

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 30, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2013-ICCD-0133 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Acting Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Katrina Ingalls at 703-620-3655 or electronically mail ICDocketMgr@ed.gov. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Survey of Principals of Rural Schools Receiving School Improvement Grants and Using the Transformation.

OMB Control Number: 1850-New.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 221.

Total Estimated Number of Annual Burden Hours: 58.

Abstract: This study collects survey data from principals of schools that received federal School Improvement Grants (SIGs) in cohort 1 and implemented the school transformation model. Rural schools and districts often face steep challenges when trying to implement the kinds of staff replacement and on-site professional development practices required in the transformation model. By examining the implementation of the SIG transformation model in challenging rural settings, the study will produce findings that can help policymakers, rural schools, and their partners plan for school improvement. Our study will do this in two ways: (1) By asking principals to specify the extent to which the transformation activities were implemented and the challenges to implementation, and (2) by identifying which activities were supported by technical assistance providers and how sufficient principals found this support.

Dated: October 25, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013-25784 Filed 10-29-13; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2013-ICCD-0137]

Agency Information Collection Activities; Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2012/14 Beginning Postsecondary Students Longitudinal Study: (BPS:12/14)

AGENCY: Institute of Education Sciences (IES), National Center for Education Statistics; Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is

proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 29, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2013-ICCD-0137 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Acting Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kathy Axt at 540-776-7742 or electronically mail ICDocketMgr@ed.gov. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2012/14 Beginning Postsecondary Students Longitudinal Study: (BPS:12/14).

OMB Control Number: 1850-0631.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 29,355.

Total Estimated Number of Annual Burden Hours: 12,532.

Abstract: The 2012/14 Beginning Postsecondary Students Longitudinal Study (BPS:12/14), conducted by the National Center for Education Statistics (NCES), is designed to follow a cohort of students who enroll in postsecondary education for the first time during the 2011-2012 academic year, irrespective of date of high school completion. The study collects data on student persistence in, and completion of, postsecondary education programs; their transition to employment; demographic characteristics; and changes over time in their goals, marital status, income, and debt, among other measures. Data from BPS are used to help researchers and policymakers better understand how financial aid influences persistence and completion, what percentages of students complete various degree programs, what early employment and wage outcomes are for certificate and degree attainees, and why students leave school. This request is to conduct the BPS:12/14 first follow-up, including panel maintenance, student interviews, and administrative record matching. NCES conducted the BPS:12/14 field test data collection in spring 2013, and this submission is for the full scale data collection.

Dated: October 25, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013-25786 Filed 10-29-13; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2013-ICCD-0135]

Agency Information Collection Activities; Comment Request; High School Equivalency Program (HEP) Annual Performance Report

AGENCY: Office of Elementary and Secondary Education (OESE), ED.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is

proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 30, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2013-ICCD-0135 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Tomakie Washington, 202-401-1097 or electronically mail ICDocketMgr@ed.gov. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: High School Equivalency Program (HEP) Annual Performance Report.

OMB Control Number: 1810-0684.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, local and tribal governments.

Total Estimated Number of Annual Responses: 44.

Total Estimated Number of Annual Burden Hours: 1,408.

Abstract: The Office of Migrant Education (OME) is collecting information for the High School Equivalency Program (HEP) Annual Performance Report (APR) in compliance with Higher Education Act of 1965, as amended, Title IV, Sec. 418A; 20 U.S.C. 1070d-2 (special programs for students whose families are engaged in migrant and seasonal farm work) (shown in appendix A), the Government Performance Results Act (GPRA) of 1993, Section 4 (1115) (shown in appendix B), and the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.253. EDGAR states that recipients of multi-year discretionary grants must submit an APR demonstrating that substantial progress has been made towards meeting the approved objectives of the project. In addition, discretionary grantees are required to report on their progress toward meeting the performance measures established for the ED grant program.

Dated: October 24, 2013.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013-25638 Filed 10-29-13; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2013-ICCD-0134]

Agency Information Collection Activities; Comment Request; Rehabilitation Services Administration Grant Re-Allotment Form

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), ED.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing; an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 30, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2013-ICCD-0134 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Tomakie Washington, 202-401-1097 or electronically mail ICDocketMgr@ed.gov. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Rehabilitation Services Administration Grant Re-allotment Form.

OMB Control Number: 1820-0692.

Type of Review: an extension of an existing information collection.

Respondents/Affected Public: State, local and tribal governments.

Total Estimated Number of Annual Responses: 402.

Total Estimated Number of Annual Burden Hours: 14.

Abstract: The Rehabilitation Act of 1973, as amended (the Act), authorizes the Commissioner to reallocate to other grant recipients that portion of a recipient's annual grant that cannot be used. To maximize the use of appropriated funds under the formula grant programs, RSA has established a re-allocation process for the Basic Vocational Rehabilitation State Grants (VR); Supported Employment State Grants (SEP); Independent Living State Grants, Part B (IL—Part B); Independent Living Services for Older Individuals Who Are Blind (IL/OB); Client Assistance (CAP); and Protection and Advocacy of Individual Rights Programs (PAIR). The authority for RSA to reallocate formula grant funds is found at sections 110(b)(2) (VR), 622(b) (SEP), 711(c) (IL—Part B), 752(j)(4) (IL—OB), 112(e)(2) (CAP), and 509(e) (PAIR) of the Act. The information will continue to be used by the RSA State Monitoring and Program Improvement Division (SMPID) to reallocate formula grant funds for the awards mentioned above.

Dated: October 24, 2013.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–25637 Filed 10–29–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0076]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Targeted Teacher Shortage Areas Nationwide Listing

Correction

In notice document 2013–24594 appearing on pages 62602–62603 in the issue of Tuesday, October 22, 2013, make the following correction:

On page 62603, in the first column, beginning on the second line, “[insert the 30th day after publication of this notice]” should read “November 21, 2013”.

[FR Doc. C1–2013–25939 Filed 10–29–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0138]

Agency Information Collection Activities; Comment Request; Annual Performance Reports for Title III and Title V Grantees

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 30, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED–2013–ICCD–0138 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E 103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail ICDocketMgr@ed.gov. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the

Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Annual Performance Reports for Title III and Title V Grantees.

OMB Control Number: 1840–0766.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: Private sector.

Total Estimated Number of Annual Responses: 782.

Total Estimated Number of Annual Burden Hours: 16,415.

Abstract: Titles III and V of the Higher Education Act of 1965, as amended (HEA), provide discretionary and formula grant programs that make competitive awards to eligible institutions of Higher Education and organizations (Title III, Part E) to assist these institutions expand their capacity to serve minority and low-income students. Grantees annually submit a yearly performance report to demonstrate that substantial progress is being made towards meeting the objectives of their project.

Dated: October 25, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–25694 Filed 10–29–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI)

AGENCY: U.S. Department of Education, Office of Postsecondary Education, National Advisory Committee on Institutional Quality and Integrity.

ACTION: Announcement of the time and location of the December 12–13, 2013 National Advisory Committee on Institutional Quality and Integrity (NACIQI) meeting.

ADDRESSES: U.S. Department of Education, Office of Postsecondary

Education, 1990 K Street NW., Room 8072, Washington, DC 20006.

NACIQI'S Statutory Authority and Function: The NACIQI is established under Section 114 of the HEA of 1965, as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, of the HEA, as amended.

- The recognition of specific accrediting agencies or associations or a specific State approval agency.

- The preparation and publication of the list of nationally recognized accrediting agencies and associations.

- The eligibility and certification process for institutions of higher education under Title IV, of the HEA, together with recommendations for improvement in such process.

- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.

- Any other advisory function relating to accreditation and institutional eligibility that the Secretary may prescribe.

SUMMARY: This meeting notice is an update to the previous notice (78 FR 50401) published on August 19, 2013, and sets forth the time and location for the December 12–13, 2013, meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI).

DATES: *Meeting Date and Place:* The NACIQI meeting will be held on December 12, 2013, from 8:00 a.m. to 5:30 p.m., and on December 13, 2013 from 8:00 a.m. to 5:30 p.m., at the Liaison Capitol Hill Hotel, 415 New Jersey Ave. NW., Washington, DC 20001.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

FOR FURTHER INFORMATION CONTACT: Carol Griffiths, Executive Director, NACIQI, U.S. Department of Education,

1990 K Street NW., Room 8073, Washington, DC 20006–8129, telephone: (202) 219–7035, fax: (202) 219–7005, or email: Carol.Griffiths@ed.gov.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2013–25736 Filed 10–29–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Open Forum on College Value and Affordability and College Ratings System

AGENCY: Office of the Under Secretary, Department of Education.

ACTION: Notice.

SUMMARY: In August 2013, President Barack Obama outlined the Administration's plans and proposals for combating rising college costs and making college affordable for American families. As part of an effort to gather public input about these proposals, and in particular the development of a college ratings system, the Department has scheduled four open forums around the country. At each open forum, a senior Administration official will be present to introduce the themes and key questions about the college value and affordability agenda and to receive feedback about the development of a college ratings system. Forum participants are welcome to share their views on measuring value and affordability, and in particular on the metrics and weighting of the ratings system.

DATES: The open forums will be held:

- Wednesday, November 6, 2013, at The California State University–Dominguez Hills, Los Angeles, CA;

- Wednesday, November 13, 2013, at George Mason University, Arlington, VA;

- Friday, November 15, 2013, at the University of Northern Iowa, Cedar Falls, IA; and

- Thursday, November 21, 2013, at Louisiana State University, Baton Rouge, LA.

All forums are open to the public.

ADDRESSES: You may submit comments regarding the Administration's proposals by electronic mail or by U.S. Mail, commercial delivery, or hand delivery. Submit electronic mail to collegefeedback@ed.gov. If you mail or deliver your comments, address them to Josh Henderson, U.S. Department of Education, 400 Maryland Avenue SW., Room 7E313, Washington, DC 20202–0001.

Privacy Note: The Department's policy is to make all comments received from members of the public available. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For information, including information about the process for collecting public input, contact: Josh Henderson, Office of the Under Secretary, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 453–7239 or by email: josh.henderson@ed.gov.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

If you have difficulty understanding English you may request language assistance services for Department information that is available to the public. These language assistance services are available free of charge. If you need more information about interpretation or translation services, please call 1–800–USA–LEARN (1–800–872–5327) (TTY: 1–800–437–0833), or email us at: Ed.Language.Assistance@ed.gov. Or write to: U.S. Department of Education, Information Resource Center, LBJ Education Building, 400 Maryland Ave. SW., Washington, DC 20202–0001.

SUPPLEMENTARY INFORMATION:

Background

A higher education is one of the most important investments individuals can make in their futures. At the same time, higher education has never been more expensive. College tuition keeps rising.

The average tuition at a public four-year college has increased by more than 250 percent over the past three decades, while incomes for families in the middle three quintiles (that is, incomes ranging from \$27,219 to \$115,896) grew by only 7, 14, and 24 percent respectively, according to data from the College Board and the U.S. Census. Declining state funding has forced students to shoulder a higher proportion of college costs, and tuition has almost doubled as a share of public college revenues over the past 25 years, growing from 25 percent to 47 percent, according to data from the State Higher Education Executive Officers Association. While a college education remains a worthwhile investment overall, the average borrower now graduates with more than \$26,000 in debt. Only 58 percent of first-time, full-time students who began college in 2004 earned a four-year degree within six years. Loan default rates are rising, and too many young adults are burdened with debt as they seek to start a family, buy a home, launch a business, or save for retirement.

In August 2013, President Obama outlined his agenda for combating rising college costs and making college affordable for American families. His plan will measure college performance through a new ratings system so students and families have the information to select schools that provide the best value. After this ratings system is well established, Congress can tie Federal student aid to college performance so that students maximize their Federal aid at institutions providing the best value. The plan will also promote innovation and competition by taking down barriers that stand in their way and shining a light on the most cutting-edge college practices and new technologies for providing high value at low costs. And to help student borrowers struggling with their existing debt, the President is committed to ensuring that all borrowers who need it can have access to the Pay As You Earn plan that caps loan payments at 10 percent of income.

Additional information on the proposals is available in the "FACT SHEET on the President's Plan to Make College More Affordable: A Better Bargain for the Middle Class," which is posted online at www.whitehouse.gov/the-press-office/2013/08/22/fact-sheet-president-s-plan-make-college-more-affordable-better-bargain-.

Open Forum Arrangements

Please check for updated information on the forum locations, logistics, and other outreach activities, at www.ed.gov.

Individuals desiring to present comments or feedback at an open forum must register by sending an email at least three days prior to the open forum to collegefeedback@ed.gov with the subject "Open Forum Registration." It is likely that each participant will be limited to five minutes for comments. The Department will notify registrants of the location and time slot reserved for them. An individual may make only one presentation at the open forums. If we receive more registrations than we are able to accommodate, the Department reserves the right to reject the registration of an entity or individual that is affiliated with an entity or individual that is already scheduled to present comments and to select among registrants to ensure that a broad range of entities and individuals is allowed to present. We will accept walk-in registrations for any remaining time slots on a first-come, first-served basis at the Department's on-site registration table. Transcripts from the open forums will be made available on the www.ed.gov Web site for public viewing. Speakers may also submit written comments. Please see the **ADDRESSES** section for instructions.

Other Feedback

In addition to the open forums, the Department will seek input in a variety of venues and formats. During the months of October, November, and December 2013, the Department will host town halls and roundtables, and it will participate in events organized by other organizations. We also encourage the public to submit comments. Please see the **ADDRESSES** section for instructions.

Accessible Format

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You

may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: October 25, 2013.

Martha Kanter,

Under Secretary of Education.

[FR Doc. 2013-25739 Filed 10-29-13; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of Open Teleconference.

SUMMARY: This notice announces an open meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). This meeting replaces the cancelled ASCAC meeting that was to be held in Washington, DC on October 8-9, 2013, due to the government shutdown. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, November 18, 2013; 1:00 p.m. to 5:00 p.m. (Mountain Time)

ADDRESSES: The meeting is open to the public. To access the call:

1. Dial Toll-Free Number: 866-740-1260 (U.S. & Canada)
2. International participants dial: <http://www.readytalk.com/intl>
3. Enter access code 8083012, followed by "#"

To ensure we have sufficient access lines for the public, we request that members of the public notify the DFO, Christine Chalk, that you intend to call into the meeting via email at: christine.chalk@science.doe.gov.

FOR FURTHER INFORMATION CONTACT:

Melea Baker, Office of Advanced Scientific Computing Research; SC-21/ Germantown Building; U. S. Department of Energy; 1000 Independence Avenue SW., Washington, DC 20585-1290; Telephone (301) 903-7486, (Email: Melea.Baker@science.doe.gov).

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance on a continuing basis to the Department of Energy on scientific priorities within the field of advanced scientific computing research.

Tentative Agenda Topics:

- View from Germantown
- Update on Exascale
- Applied Math Committee of Visitors

Public Participation: The teleconference meeting is open to the public.

If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Melea Baker via FAX at 301-903-4846 or via email (Melea.Baker@science.doe.gov). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days by contacting Ms. Melea Baker at the address listed above.

Issued in Washington, DC, on October 23, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013-25811 Filed 10-29-13; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 20, 2013, 5:00 p.m.

ADDRESSES: National Atomic Testing Museum, 755 E. Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 630-0522; Fax (702) 295-5300 or Email: NSSAB@nnsa.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE-EM and site management in the

areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Corrective Action Alternatives for Corrective Action Unit 550, Smokey Contamination Area—Work Plan Item #1
2. External Peer Review for Yucca Flat—Work Plan Item #2
3. Radionuclide Decay at Use-Restricted Soil Sites—Work Plan Item #3
4. Overview of the Groundwater Open House—Work Plan Item #4

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Barbara Ulmer at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Barbara Ulmer at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so during the 15 minutes allotted for public comments.

Minutes: Minutes will be available by writing to Barbara Ulmer at the address listed above or at the following Web site: <http://nv.energy.gov/nssab/MeetingMinutes.aspx>.

Issued at Washington, DC, on October 23, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013-25814 Filed 10-29-13; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Biomass Research and Development Technical Advisory Committee

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under Section 9008(d) of the Food, Conservation, and Energy Act of

2008. The Federal Advisory Committee Act (Public Law No. 92-463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES:

November 21, 2013 8:30 a.m.–5:30 p.m.
November 22, 2013 8:30 a.m.–1:00 p.m.

ADDRESSES: American Geophysical Union, 2000 Florida Avenue NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT:

Elliott Levine, Designated Federal Official for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586-1476; Email: Elliott.Levine@ee.doe.gov or Roy Tiley at (410) 997-7778 ext. 220; Email: rtiley@bcs-hq.com.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Update on USDA Biomass R&D Activities
- Update on DOE Biomass R&D Activities
- Annual Committee Recommendations
- Presentations on the Use of Marginal Lands for Bioenergy
- Overview of the Bioenergy Knowledge Discovery Framework (KDF) Tool

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you must contact Elliott Levine at 202-586-1476; Email: Elliott.Levine@ee.doe.gov or Roy Tiley at (410) 997-7778 ext. 220; Email: rtiley@bcs-hq.com at least 5 business days prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Co-chairs of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Co-chairs will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available within 45 days for public review and copying at <http://biomassboard.gov/committee/meetings.html>.

Issued at Washington, DC, on October 23, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013-25813 Filed 10-29-13; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14-4-000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on October 10, 2013, Texas Eastern Transmission, (Texas Eastern), having its principal place of business at 5400 Westheimer Court, Houston, Texas, 77056, filed an application in Docket No. CP14-4-000 pursuant to Section 7(b) and Section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity to construct its Emerald Longwall Mine Panel D1 Project. Texas Eastern states in its application that, due to anticipated longwall mining activities of Emerald Coal Resources, LP (Emerald) in Greene County, Pennsylvania in Panel D1 of Emerald's mine, ground subsidence may occur. In order to maintain the operation of their existing pipeline facilities throughout the duration of the subsidence anticipated from the mining activities, Texas Eastern proposes to excavate, elevate, replace, and/or abandon by removal certain sections of five different pipelines and appurtenant facilities located in Greene County, Pennsylvania, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Lisa A. Connolly, General Manager, Rates and Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas, 77251, or by calling

(713) 627-4102 (telephone) or (713) 627-5947 (fax) laconnolly@spectraenergy.com.

Pursuant to section 157.9 of the Commission's regulations, 18 CFR 157.9, within 90 days of this Notice, the Commission's staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission's staff issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to reach a final decision on a request for federal authorization within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project

provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: November 13, 2013.

Dated: October 23, 2013.

Kimberly D. Bose,
Secretary.

[FR Doc. 2013-25699 Filed 10-29-13; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12721-006]

Pepperell Hydro Company, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P-12721-006.

c. *Date filed:* October 9, 2013.

d. *Applicant:* Pepperell Hydro Company, LLC.

e. *Name of Project:* Pepperell Hydroelectric Project.

f. *Location:* On the Nashua River, in the town of Pepperell, Middlesex County, Massachusetts. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Dr. Peter B. Clark, 823 Bay Road, P.O. Box 149, Hamilton, MA 01936; (978) 468-3999; or pclark@swiftrivercompany.com.

i. *FERC Contact:* Brandon Cherry at (202) 502-8328 or brandon.cherry@ferc.gov.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* December 9, 2013.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC. 20426. The first page of any filing should include docket number P-12721-006.

m. The application is not ready for environmental analysis at this time.

n. *The existing, unlicensed Pepperell Hydroelectric Project consists of:* (1) The 23.5-foot-high, 251-foot-long concrete gravity ogee Pepperell Paper dam that

includes a 244-foot-long spillway with a crest elevation of 197.0 feet North American Vertical Datum 1988 (NAVD88) and 3-foot-high wooden flashboards; (2) a 3.5-mile-long, 294-acre impoundment with a normal water surface elevation of 200.0 feet NAVD88; (3) a 25-foot-long, 26-foot-wide intake structure with two 7.75-foot-wide, 14.0-foot-high leaf intake gates; (4) a 12-foot-diameter, 565.5-foot-long penstock; (5) a 14.0 to 58.0-foot-wide, 25.5-foot-long forebay structure that includes a 1.5-foot-diameter gate with low level drain pipe and a 4.25-foot-wide, 3.5-foot-high trash sluice gate; (6) six 8-foot-wide, 10-foot-high turbine bay headgates with 17.33-foot-high trashracks with 1.75-inch clear bar spacing; (7) a 62-foot-wide, 41-foot-long powerhouse containing three 640-kilowatt (kW) turbine-generating units for a total installed capacity 1,920 kW; (8) three 11.5-foot-long turbine draft tubes; (9) three 265-foot-long, 600-volt transmission lines; and (10) appurtenant facilities.

The existing project also includes a downstream fish passage facility that consists of: (1) A 3-foot-wide, 23-foot-long concrete intake with a 4-foot-wide, 8-foot-high entrance gate; (2) a collection channel with a 2-foot-high, 2-foot-wide overflow stoplog notch; and (3) a 5-foot-deep plunge pool.

The existing project bypasses approximately 700 feet of the Nashua River.

Pepperell Hydro Company, LLC proposes to increase the capacities of two turbine-generating units to 764 kW and 735 kW and install a new 67.5-kW low flow turbine-generating unit at the dam for a total installed capacity of 2,206.5 kW. Pepperell Hydro Company, LLC proposes to operate the project in a run-of-river mode and release: (1) 46 cubic feet per second (cfs) or inflow to the bypassed reach from April 1 through November 30, which would include 17 cfs or inflow through the existing downstream fish passage facility from June 15 through October 30; and (2) 15 cfs or inflow to the bypassed reach from December 1 through March 31. The project would have an estimated average annual generation of 7,997 megawatt-hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Massachusetts Historical Commission, as required by section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter—December 2013
Issue Notice of Acceptance—February 2014

Issue Scoping Document—March 2014
Issue Notice of Ready for Environmental Analysis—May 2014

Issue Notice of the Availability of the EA—October 2014

Dated: October 23, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013-25700 Filed 10-29-13; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14-120-000]

BTG Pactual Commodities (US) LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of BTG Pactual Commodities (US) LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard

to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is November 6, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: October 23, 2013.

Kimberly D. Bose,
Secretary.

[FR Doc. 2013-25696 Filed 10-29-13; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14-5-000]

Enbridge Pipelines (FSP) LLC; Notice of Petition for Declaratory Order

Take notice that on October 22, 2013, pursuant to Rule 207(a)(2) of the

Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2013), Enbridge Pipelines (FSP) LLC (Enbridge FSP) filed a petition requesting a declaratory order approving specific aspects of Enbridge FSP's proposed tariff and rate structure for the Flanagan South Pipeline Project, as further described in the petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern time on November 22, 2013

Dated: October 23, 2013.

Kimberly D. Bose,
Secretary.

[FR Doc. 2013-25697 Filed 10-29-13; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD14-3-000]

Borough of Ellwood City, Pennsylvania; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On October 10, 2013, the Borough of Ellwood City, Pennsylvania, filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act, as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The Ellwood City Hydroelectric Project would be located at the Borough of Ellwood City's wastewater treatment plant in Lawrence County, Pennsylvania.

Applicant Contact: August E. Maas, P.E., Hill Engineering, 8 Gibson Street, North East, PA 16428, Phone No. (814) 725-8659.

FERC Contact: Christopher Chaney, Phone No. (202) 502-6778, email: christopher.chaney@ferc.gov.

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) An intake from the existing 24-inch wastewater discharge pipe; (2) a proposed 20-foot-wide by 20-foot-long powerhouse, containing one 10-kilowatt generating unit; (3) a proposed discharge pipe returning flows to an existing rip-rapped wastewater discharge channel; and (4) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 70 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY—Continued

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the “COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY” or “MOTION TO INTERVENE,” as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission’s regulations.¹ All comments contesting Commission staff’s preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission’s eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance,

please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at <http://www.ferc.gov/docs-filing/elibrary.asp> using the “eLibrary” link. Enter the docket number (e.g., CD14–3) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email FERCOnlineSupport@ferc.gov. For TTY, call (202) 502–8659.

Dated: October 23, 2013.

Kimberly D. Bose,
Secretary.

[FR Doc. 2013–25698 Filed 10–29–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0725; FRL–9902–24]

Dichloromethane and N-Methylpyrrolidone TSCA Chemical Risk Assessment; Notice of Rescheduled Public Meetings and Extension of Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 23, 2013, EPA announced that it would be holding three peer review meetings by web connect and teleconference on

September 26, 2013, October 15, 2013, and November 12, 2013 regarding EPA’s draft Toxic Substances Control Act (TSCA) chemical risk assessment, “TSCA Workplan Chemical Risk Assessment for Dichloromethane and N-Methylpyrrolidone.” The first meeting was held as scheduled. Due to the government shutdown, however, EPA has rescheduled the remaining two peer review meetings and is announcing the rescheduled meetings in this notice. EPA is also extending the due date for public comments.

DATES: Meetings. The peer review meetings will be held on Friday, November 8, 2013, from 10:00 a.m. to 6:00 p.m., EST; and Friday, December 13, 2013, from 12:00 p.m. to 3:00 p.m., EST. **Comments.** Written comments on the assessment must be submitted on or before November 22, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0725, by one of the methods described in the notice published in the **Federal Register** on August 23, 2013, a copy of which is available in the docket at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Stan Barone, Jr., Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number (202) 564–1169; email address: barone.stan@epa.gov.

For peer review meeting logistics contact: Susie Warner, the Scientific Consulting Group (SCG), Inc., 656 Quince Orchard Rd., Suite 210, Gaithersburg, MD 20878–1409; telephone number: (301) 670–4990, ext. 227; fax number: (301) 670–3815; email address: SWARNER@scgcorp.com.

SUPPLEMENTARY INFORMATION: For details about the meetings regarding the peer review of EPA’s draft Toxic Substances Control Act (TSCA) chemical risk assessment, “TSCA Workplan Chemical Risk Assessment for Dichloromethane and N-Methylpyrrolidone,” please see the notice that published in the **Federal**

¹ 18 CFR 385.2001–2005 (2013).

Register of August 23, 2013 (78 FR 52525) (FRL 9397-4). The first meeting was held as scheduled. However, due to the government shutdown, EPA has rescheduled the remaining two peer review meetings and is announcing the rescheduled meetings in this notice. EPA is also extending the due date for public comments. To be sure your comments are contained in the peer review record and are available to the peer reviewers, please submit the comments on or before November 22, 2013.

The rescheduled second peer review panel meeting on November 8, 2013, will be devoted to deliberations of the draft Dichloromethane (DCM) and N-Methylpyrrolidone (NMP) TSCA risk assessment by the peer review panel, guided by the charge questions to the peer review panel.

The third and final peer review panel meeting on December 13, 2013, will focus on the peer review panel's discussion of its draft DCM and NMP TSCA risk assessment recommendations to EPA, which will be posted on the contractor Web site prior to the final peer review meeting.

List of Subjects

Environmental protection, Chemicals, Peer review, Risk assessments, Dichloromethane and N-Methylpyrrolidone.

Dated: October 24, 2013.

Jeff Morris,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2013-25737 Filed 10-25-13; 4:15 pm]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2013-0026; FRL-9398-6]

Pesticide Products; Registration Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received several applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before November 29, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the EPA File Symbol of interest as shown in the body of this document, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Susan Lewis, Antimicrobials Division (AD) (7510P), telephone number: (703) 305-7090, email address: ADFRNotices@epa.gov; Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), telephone number: (703) 305-7090, email address: BPPDFRNotices@epa.gov; or Lois Rossi, Registration Division (RD) (7505P), telephone number: (703) 305-7090, email address: RDFRNotices@epa.gov. The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received several applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not

imply a decision by the Agency on these applications. For actions being evaluated under the Agency's public participation process for registration actions, there will be an additional opportunity for a 30-day public comment period on the proposed decision. Please see the Agency's public participation Web site for additional information on this process (<http://www.epa.gov/pesticides/regulating/registration-public-involvement.html>). EPA received the following applications to register pesticide products containing an active ingredient not included in any currently registered products:

1. *EPA File Symbols:* 1021-EANA, 1021-EANE, 1021-EANG, 1021-EANL, 1021-EANR, 1021-EANT, 1021-EANU, 10308-GA, and 10308-GL. *Docket ID Number:* EPA-HQ-OPP-2013-0478. *Applicant:* I2L Research USA Inc., 1330 Dillon Heights Ave., Baltimore, MD 21228-1199, on behalf of Sumitomo Chemical Company, LTD., 27-1, Shinkawa 2-Chome, Chuo-Ku, Tokyo 104-8260, Japan. *Active ingredient:* Momfluorothrin. *Product type:* Insecticide. *Proposed uses:* Non-food residential indoor/outdoor uses. (RD)

2. *EPA File Symbols:* 6704-OG and 6704-OU. *Docket ID Number:* EPA-HQ-OPP-2013-0538. *Applicant:* U.S. Fish and Wildlife Service, Arlington Square Building, MS 725, Washington, DC 20240. *Active ingredient:* Male sea lamprey pheromone (3-ketopetromyzonol-24-sulfate). *Product type:* Biochemical pheromone. *Proposed uses:* Mating disruptor for sea lamprey control. (BPPD)

3. *EPA File Symbol:* 71975-G. *Docket ID Number:* EPA-HQ-OPP-2013-0570. *Applicant:* Matthew Brooks, Ph.D. of Ag-Chem Consulting, 12208 Quinque Lane, Clifton, VA 20124 on behalf of Northwest Agricultural Products, 821 South Chestnut Ave., Pasco, WA 99301. *Active ingredient:* *Pseudomonas fluorescens* strain D7. *Product type:* Herbicide. *Proposed use:* Manufacturing use. (BPPD)

4. *EPA File Symbol:* 71975-U. *Docket ID Number:* EPA-HQ-OPP-2013-0570. *Applicant:* Matthew Brooks, Ph.D. of Ag-Chem Consulting, 12208 Quinque Lane, Clifton, VA 20124 on behalf of Northwest Agricultural Products, 821 South Chestnut Ave., Pasco, WA 99301. *Active ingredient:* *Pseudomonas fluorescens* strain D7. *Product type:* Herbicide. *Proposed uses:* For suppression of downy brome, medusahead, Japanese brome and jointed goatgrass on cropland, rangeland, turf and non-crop areas. (BPPD)

5. *EPA File Symbol:* 74655-GU. *Docket ID Number:* EPA-HQ-OPP-

2013-0627. *Applicant:* Hercules, Inc., a Wholly Owned Subsidiary of Ashland, Inc., 5500 Blazer Parkway, Dublin, OH 43017. *Active ingredient:* Ammonium Carbamate. *Product type:* Antimicrobial. *Proposed uses:* Paper mill process water and re-circulating cooling water systems. (AD)

6. *EPA File Symbol:* 84542-O. *Docket ID Number:* EPA-HQ-OPP-2013-0433. *Applicant:* Cupron Technologies, P.O. Box 85073, Richmond, VA 23285. *Active ingredient:* Cuprous iodide. *Product type:* Bacteristat, fungistat. *Proposed uses:* Indoor non-food use on fibers, carpet, films, plastics, coatings, laminates, adhesives and sealants. (AD)

7. *EPA File Symbol:* 89615-R. *Docket ID Number:* EPA-HQ-OPP-2013-0575. *Applicant:* Amy Plato Roberts of Technology Science Group, Inc., 712 Fifth St., Suite A, Davis, CA 95616 on behalf of IAB, S.L. (Investigaciones y Aplicaciones Biotecnológicas S.L.), Avda, Paret del Patriarca 11-B, Ap. 30, 46113 Moncada (Valencia) Spain. *Active ingredient:* *Bacillus subtilis* strain IAB/BS03. *Product type:* Fungicide. *Proposed use:* Manufacturing use. (BPPD)

8. *EPA File Symbols:* 89615-E, 89615-G, 89615-L, and 89615-U. *Docket ID Number:* EPA-HQ-OPP-2013-0575. *Applicant:* Amy Plato Roberts of Technology Science Group, Inc., 712 Fifth St., Suite A, Davis, CA 95616 on behalf of IAB, S.L. (Investigaciones y Aplicaciones Biotecnológicas S.L.), Avda, Paret del Patriarca 11-B, Ap. 30, 46113 Moncada (Valencia) Spain. *Active ingredient:* *Bacillus subtilis* strain IAB/BS03. *Product type:* Fungicide. *Proposed uses:* Greenhouse, field use, and home and garden use on various fruits and vegetables, cotton, hops, tobacco, fruit and nut trees, turf, and ornamentals. (BPPD)

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 30, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013-25596 Filed 10-29-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2009-1017; FRL-9403-2]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1a and 1b of Unit II., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a August 21, 2013 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the August 21, 2013 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective October 30, 2013.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 308-8195; email address: pates.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2009-1017, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory

Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review

the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

II. What action is the agency taking?

This notice announces the cancellation, as requested by registrants, of products registered under FIFRA section 3. In addition, this notice also announces the cancellation, as requested by Syngenta Crop Protection, LLC (Syngenta), of the last two

remaining tralkoxydim products registered for use in the United States. EPA is not proposing any tolerance actions for tralkoxydim at this time. However, if any tolerance actions become necessary in the future, there will be an announcement published in the **Federal Register** and a public comment period on the proposed action. These registrations are listed in sequence by registration number in Tables 1a and 1b of this unit.

TABLE 1a—PRODUCT CANCELLATIONS

EPA Registration No.	Product name	Chemical name
000100-01125	Impasse Termite System	Lambda-cyhalothrin.
000100-01156	Impasse Premix GR	Lambda-cyhalothrin.
000100-01166	Impasse Termite Blocker	Lambda-cyhalothrin.
000264-01048	EXP3 Seed Applied Nematicide/Insecticide	Thiodicarb.
000432-01237	BES Garden Dust 10%	Carbaryl.
000432-01238	AES Carbaryl Insecticide Spray-RTU	Carbaryl.
000432-01239	BES Garden Dust 5%	Carbaryl.
000432-01244	AES Sevin Granules Ant, Flea, Tick & Grub Killer (1% Sevin).	Carbaryl.
001022-00563	Chapco KD	Potassium dimethyldithiocarbamate.
001022-00574	DCD-SDDC	Sodium dimethyldithiocarbamate.
001022-00577	Buffalo System II	Sodium dimethyldithiocarbamate.
009688-00296	Chemsico 0.51% Granular Propiconazole	Propiconazole.
010807-00448	Country Vet Flea & Tick Fogger with Growth Inhibitor	MGK 264, Pyrethrins (NO INERT USE), Pyriproxyfen, Permethrin.
010807-00454	Country Vet Fly Insecticide & Repellent for Horses	Stabilene, Pyrethrins (NO INERT USE), Piperonyl butoxide.
010807-00466	CB Country Vet 80	Piperonyl butoxide, Pyrethrins (NO INERT USE).
010807-00469	Country Vet Fogger with Esfenvalerate	Pyrethrins (NO INERT USE), Piperonyl butoxide, Esfenvalerate, MGK 264.
011556-00121	Advantage TM 110	Imidacloprid.
040391-00010	Entech Fog-10	MGK 264, Piperonyl butoxide, Pyrethrins (NO INERT USE).
060061-00107	Woodtreat XL Sapstain Control Chemical	1-Decanaminium, N-decyl-N,N-dimethyl-, chloride and Propiconazole.
060061-00114	Woodtreat P Sapstain Control Chemical	Propiconazole.
060061-00121	Woodtreat XP Sapstain Control Product	Propiconazole and Carbamic acid, butyl-, 3-iodo-2-propynyl ester.
060061-00124	Valvtect Marine Premium Diesel With Bioguard Additive	Morpholine, 4,4'-(2-ethyl-2-nitro-1,3-propanediyl)bis-, 4-(2-Nitrobutyl)morpholine.
073049-00450	Dinotefuran Fly Bait	Dinotefuron.
083558-00005	Paraquat Dichloride Technical	Paraquat dichloride.
MD-010001	Sevin Brand XLR Plus Carbaryl Insecticide	Carbaryl.
PA-010002	Sevin XLR Plus Carbaryl Insecticide	Carbaryl.
WI-110001	Starcane Ultra Herbicide	Fluroxypyr 1-methylheptyl ester.

TABLE 1b—TRALKOXYDIM PRODUCT CANCELLATIONS

Registration No.	Product name	Chemical name
000100-01105	Achieve 40DG Herbicide	Tralkoxydim.
000100-01106	Achieve 80DG Herbicide	Tralkoxydim.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1a

and 1b of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA

registration numbers of the products listed in Table 1a and 1b of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA Company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419-8300.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company No.	Company name and address
264 MD010001, PA010002	Bayer Cropscience LP, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709.
432	Bayer Environmental Science, A Division of Bayer Cropscience LP, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709.
1022	IBC Manufacturing Co., 416 E. Brooks Rd., Memphis, TN 38109.
9688	Chemsico, A Division of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114-0642.
10807	Amrep, Inc, 990 Industrial Park Dr., Marietta, GA 30062.
11556	Bayer Healthcare, LLC, P.O. Box 390, Shawnee Mission, KS 66201-0390.
40391	Entech Systems Corporation, Agent: Regguide, 509 Tower Valley Dr., Hillsboro, MO 63050.
60061	Kop-Coat, Inc., 3020 William Pitt Way, Pittsburgh, PA 15238.
73049	Valent Biosciences Corporation, Environmental Science Division, 870 Technology Way, Libertyville, IL 60048-6316.
83558	Celsius Property B.V., Amsterdam (NL), Agent: Makhteshim Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
WI-110001	Dow Agrosciences LLC, 9330 Zionsville Rd., Suite 308/2E, Indianapolis, IN 46268-1054.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the August 21, 2013 **Federal Register** notice (78 FR 51721) (FRL-9396-5) announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1a and 1b of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1a and 1b of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1a and 1b of Unit II. are canceled. The effective date of the cancellations that are the subject of this notice is October 30, 2013. Any distribution, sale, or use of existing stocks of the products identified in Table 1a and 1b of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment

in the **Federal Register** of August 21, 2013. The comment period closed on September 20, 2013.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

A. For All Products Identified in Table 1a in Unit II

The registrants may continue to sell and distribute existing stocks of products listed in Table 1a of Unit II. until October 30, 2014, which is 1 year after the publication of the Cancellation Order in the **Federal Register**.

Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1a, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1a of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

B. For All Tralkoxydim Products Identified in Table 1b in Unit II

The registrants may continue to sell and distribute existing stocks of products listed in Table 1b of Unit II. until November 1, 2014. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1b,

except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1b of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 21, 2013.

Richard P. Keigwin, Jr.,
Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.

[FR Doc. 2013-25593 Filed 10-29-13; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (www.fmc.gov) or by contacting the Office of Agreements at (202)-523-5793 or tradeanalysis@fmc.gov.

Agreement No.: 012227.

Title: NYK/Eukor North America/Far East Space Charter Agreement.

Parties: Nippon Yusen Kaisha and Eukor Car Carrier Inc.

Filing Party: Robert Shababb, Corporate Counsel, NYK Line (North America) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.

Synopsis: The agreement authorizes NYK and Eukor to charter space to each other on each other's ro-ro vessels in the trade between various North America coastal ports, on the one hand, and Japan, South Korea, and China, on the other hand.

Agreement No.: 012230.

Title: P3 Network Vessel Sharing Agreement.

Parties: A.P. Moller-Maersk A/S trading under the name Maersk Line; CMA CGM S.A.; and MSC Mediterranean Shipping Company, S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes the parties to share vessels and engage in related cooperative activities in the trades between each of Asia, North Europe, and the Mediterranean on the one hand and the U.S. on the other hand.

By Order of the Federal Maritime Commission.

Dated: October 25, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013-25785 Filed 10-29-13; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary license has been reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 024003N.

Name: Concord Atlantic Inc. dba Concord Atlantic Shipping.

Address: 10095 Washington Blvd., North, Suite 211, Laurel, MD.

Date Reissued: August 16, 2013.

James A. Nussbaumer,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013-25783 Filed 10-29-13; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations and Terminations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked or terminated for the reason

shown pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 1446F.

Name: Campbell, William H. dba William H. Campbell Co.

Address: 911 Western Avenue, Suite 560, Seattle, WA 98104.

Date Revoked: September 4, 2013.

Reason: Voluntary Surrender of License.

License No.: 16394N.

Name: First Express (Los Angeles), Inc.

Address: 5353 West Imperial Highway, Suite 900, Los Angeles, CA 90045.

Date Revoked: August 14, 2013.

Reason: Failed to maintain a valid bond.

License No.: 019060N.

Name: Skelton Sherborne Inc.

Address: 1225 North Loop West, Suite 432, Houston, TX 77008.

Date Revoked: September 9, 2013.

Reason: Voluntary Surrender of License.

License No.: 023246F.

Name: Acceleron Trade Services, Ltd. Co.

Address: 11250 West Road, Bldg. I-1, Houston, TX 77065.

Date Revoked: September 11, 2013.

Reason: Voluntary Surrender of License.

License No.: 023909N.

Name: E and N International Transport LLC.

Address: 4574 Swilcan Bridge Lane North, Jacksonville, FL 32224.

Date Revoked: August 14, 2013.

Reason: Failed to maintain a valid bond.

James A. Nussbaumer,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013-25789 Filed 10-29-13; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 25, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Park Cities Financial Group, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of Park Cities Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, October 24, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013-25590 Filed 10-29-13; 8:45 am]

BILLING CODE 6210-01-P

GENERAL SERVICES ADMINISTRATION

[Notice—GTAC—2013-03; Docket No. 2013-0002; Sequence 30]

Government-Wide Travel Advisory Committee (GTAC); Public Advisory Committee Meetings

AGENCY: Office of Government-Wide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: This notice announces the cancellation of the GTAC November 7, 2013 meeting originally published on September 12, 2013 in the **Federal Register**. This notice also confirms the GTAC meeting scheduled for December 10, 2013.

DATES: The meeting will be held on Tuesday, December 10, 2013, beginning at 9:00 a.m. and ending no later than 4:00 p.m. Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Ms. Marcerto Barr, Designated Federal Officer (DFO), Government-wide Travel

Advisory Committee (GTAC), Office of Government-wide Policy, General Services Administration, 1800 F Street NW., Washington, DC 20405, 202–208–7654 or by email to: gtac@gsa.gov.

SUPPLEMENTARY INFORMATION: This notice announces the cancellation of the GTAC November 7, 2013 meeting originally published in the **Federal Register** at 78 FR 56231 on September 12, 2013. The purpose of the GTAC is to conduct public meetings, submit reports and to make recommendations to existing travel policies, processes and procedures, including the per diem methodology to assure that official travel is conducted in a responsible manner with the need to minimize costs.

Dated: October 24, 2013.

Carolyn Austin-Diggs,

*Acting Deputy Associate Administrator,
Office of Asset and Transportation
Management, Office of Government-wide
Policy.*

[FR Doc. 2013–25669 Filed 10–29–13; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

[Notice–MK–2013–10; Docket No. 2013–0002; Sequence 32]

The Presidential Commission on Election Administration (PCEA); Upcoming Public Advisory Meeting

AGENCY: Office of Government-Wide Policy, U.S. General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: The Presidential Commission on Election Administration (PCEA), a Federal Advisory Committee established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C., App., and Executive Order 13639, as amended by EO 13644, will hold a meeting open to the public via teleconference on Thursday, November 14, 2013.

DATES: *Effective date:* October 30, 2013.

Meeting date: The meeting will be held on Thursday, November 14, 2013, beginning at 4:00 p.m. and ending no later than 6:30 p.m., Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Nejbauer, Designated Federal Officer, General Services Administration, Presidential Commission on Election Administration, 1776 G Street NW., Washington, DC 20006, email mark.nejbauer@supportthevoter.gov.

SUPPLEMENTARY INFORMATION:

Background: The PCEA was established to identify best practices and make recommendations to the President on the efficient administration of elections in order to ensure that all eligible voters have the opportunity to cast their ballots without undue delay, and to improve the experience of voters facing other obstacles in casting their ballots.

Agenda: The purpose of this meeting is for Commission members to discuss the subjects set forth in Executive Order 13639, as amended, and relate back to the full Commission information that was gathered from meetings apart from the public hearings.

Meeting Access: The teleconference meeting is open to the public; interested members of the public may listen to the PCEA discussion using 1–888–606–9808 and pass code 7036450. Members of the public will not have the opportunity to ask questions or otherwise participate in the teleconference. However, members of the public wishing to comment should follow the steps detailed in Procedures for Providing Public Comments below.

Attendance at the Meeting: Please see the PCEA Web site (<http://www.supportthevoter.gov>) for any materials available in advance of the meeting. Detailed meeting minutes will be posted within 90 days of the meeting.

Procedures for Providing Public Comments: In general, public comments will be posted on the PCEA Web site (see above). All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Any comments submitted in connection with the PCEA meeting will be made available to the public under the provisions of the Federal Advisory Committee Act. The public is invited to submit written comments for this meeting until 5:00 p.m. Eastern Standard Time on Monday, November 11, 2013, by either of the following methods:

Electronic or Paper Statements: Submit electronic statements to Mr. Nejbauer, Designated Federal Officer at mark.nejbauer@supportthevoter.gov; or send three (3) copies of any written statements to Mr. Nejbauer at the PCEA GSA address above. Written testimony not received by 5:00 p.m. Eastern Time on Monday, November 11, 2013 may be submitted but will not be considered at the Thursday, November 14, 2013 meeting.

Dated: October 25, 2013.

Anne Rung,

*Associate Administrator, Office of
Government-Wide Policy, General Services
Administration.*

[FR Doc. 2013–25817 Filed 10–29–13; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–14–13GX]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Assessment of a Comprehensive Human Immunodeficiency Virus (HIV) Clinic-Based Intervention to Promote Patients' Health and Reduce Transmission Risk—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This research is funded by the CDC and the National Institute of Mental Health (NIMH). The purpose of the project is to implement and evaluate an HIV clinic-based intervention, the goals of which are to increase the percentage of patients who have an undetectable viral load, who are adherent to antiretroviral therapy (ART), who attend clinic regularly for primary care, and practice safer sexual behaviors. Realizing these goals will promote HIV patients' health and reduce risk of transmitting HIV to others. These are objectives of the National HIV/AIDS Strategy and goals of the strategic plan of the Division of HIV/AIDS Prevention, Centers for Disease Control and Prevention.

The project will be conducted at six university-affiliated HIV clinics in the United States: (1) Baylor College of Medicine, Houston, (2) Boston Medical

Center, (3) University of Alabama, Birmingham, (4) University of California at San Diego, (5) University of Miami Medical School, and (6) University of Washington in the state of Washington. This proposed data collection will occur over 3 years.

The intervention that is part of this project focuses primarily on HIV patients who have a detectable viral load, i.e., their viral load is not as low as it can be and is not fully controlled. The intervention components include: (1) Brief counseling from medical providers during primary care visits informed by a behavioral screener completed by patients; (2) a computer-based intervention (CBI) in which patients see short videos of HIV medical providers (not their own providers) talking about the importance of regular clinic attendance, adherence to ART, and safer sex; and (3) one-on-one

counseling from a prevention specialist if needed.

The following data will be collected in this project:

- A data manager at each clinic will electronically transmit patient clinical data to CDC using a unique study identification code as the only means of identifying a patient's data. The data files sent to CDC will not contain any medical record numbers, names, or social security numbers. The information will be encrypted and stored in a secure CDC server. The data collected from patients include (1) a behavioral screener self-administered by patients each time they have a primary care visit. Patients complete the screener in the waiting room before seeing their primary care provider. (2) CBI assessment items on demographic factors, clinic attendance, ART status, ART adherence, and sexual risk

behavior that are completed before patients see the CBI videos. Patients with detectable viral loads will be asked to do the CBI three times, spaced approximately three months apart. Patients' CBI responses are not shared with their clinic providers. (3) On a quarterly basis, 50 patients at each clinic will be asked to complete a brief exit survey after their medical exam, asking about topics that the provider may have discussed with them at their medical visit (e.g., adherence, clinic attendance).

- Data collected from primary care medical providers includes a quarterly survey asking them to indicate the types of topics/issues they discussed with their HIV patients.

There are no costs to respondents other than their time. The total annualized burden hours are 3,378.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Data manager at clinic	Electronic transmittal of clinical variables archived in clinic databases (no form).	6	4	24
Patient	Behavioral screener (patients with detectable or undetectable VL; paper form).	6,315	4	5/60
Patient	CBI assessment items for patients with detectable VL (electronic form).	2,069	3	5/60
Patient	Patient exit survey (electronic form)	1,200	1	5/60
Primary care provider	Provider survey (electronic form)	120	4	10/60

LeRoy Richardson,
Chief, Information Collection Review Office,
Office of Scientific Integrity, Office of the
Associate Director for Science Office of the
Director, Centers for Disease Control and
Prevention.

[FR Doc. 2013-25711 Filed 10-29-13; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-8055-N]

RIN 0938-AR58

Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2014

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65

and over) and disabled (under age 65) beneficiaries enrolled in Part B of the Medicare Supplementary Medical Insurance (SMI) program beginning January 1, 2014. In addition, this notice announces the monthly premium for aged and disabled beneficiaries as well as the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. The monthly actuarial rates for 2014 are \$209.80 for aged enrollees and \$218.90 for disabled enrollees. The standard monthly Part B premium rate for all enrollees for 2014 is \$104.90, which is equal to 50 percent of the monthly actuarial rate for aged enrollees or approximately 25 percent of the expected average total cost of Part B coverage for aged enrollees. (The 2013 standard premium rate was \$104.90.) The Part B deductible for 2014 is \$147.00 for all Part B beneficiaries. If a beneficiary has to pay an income-related monthly adjustment, they may have to pay a total monthly premium of about 35, 50, 65, or 80 percent of the total cost of Part B coverage.

DATES: *Effective Date:* January 1, 2014.

FOR FURTHER INFORMATION CONTACT: M. Kent Clemens, (410) 786-6391.

SUPPLEMENTARY INFORMATION:

I. Background

Part B is the voluntary portion of the Medicare program that pays all or part of the costs for physicians' services, outpatient hospital services, certain home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by Medicare Part A, Hospital Insurance. Medicare Part B is available to individuals who are entitled to Medicare Part A, as well as to U.S. residents who have attained age 65 and are citizens, and aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. Part B requires enrollment and payment of monthly premiums, as described in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all

enrollees and total incurred costs is met by transfers from the general fund of the Treasury.

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to announce the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. The Part B annual deductible is included because its determination is directly linked to the aged actuarial rate.

The monthly actuarial rates for aged and disabled enrollees are used to determine the correct amount of general revenue financing per beneficiary each month. These amounts, according to actuarial estimates, will equal, respectively, one-half of the expected average monthly cost of Part B for each aged enrollee (age 65 or over) and one-half of the expected average monthly cost of Part B for each disabled enrollee (under age 65).

The Part B deductible to be paid by enrollees is also announced. Prior to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), the Part B deductible was set in statute. After setting the 2005 deductible amount at \$110, section 629 of the MMA (amending section 1833(b) of the Act) requires that the Part B deductible be indexed beginning in 2006. The inflation factor to be used each year is the annual percentage increase in the Part B actuarial rate for enrollees age 65 and over. Specifically, the 2014 Part B deductible is calculated by multiplying the 2013 deductible by the ratio of the 2014 aged actuarial rate to the 2013 aged actuarial rate. The amount determined under this formula is then rounded to the nearest \$1.

The monthly Part B premium rate to be paid by aged and disabled enrollees is also announced. (Although the costs to the program per disabled enrollee are different than for the aged, the statute provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92–603), the premium rate, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly Title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) suspended this premium determination process. Section 124 of TEFRA changed the

premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98–21), section 2302 of the Deficit Reduction Act of 1984 (DEFRA 84) (Pub. L. 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA 85) (Pub. L. 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) (Pub. L. 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (Pub. L. 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) (Pub. L. 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) (Pub. L. 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

The BBA included a further provision affecting the calculation of the Part B actuarial rates and premiums for 1998 through 2003. Section 4611 of the BBA modified the home health benefit payable under Part A for individuals enrolled in Part B. Under this section, beginning in 1998, expenditures for home health services not considered “post-institutional” are payable under Part B rather than Part A. However, section 4611(e)(1) of the BBA required that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from Part A to Part B. Section 4611(e)(2) of the BBA also provided a specific yearly proportion for the transferred funds. The proportions were $\frac{1}{6}$ for 1998, $\frac{1}{3}$ for 1999, $\frac{1}{2}$ for 2000, $\frac{2}{3}$ for 2001, and $\frac{5}{6}$ for 2002. For the purpose of determining the correct amount of financing from general revenues of the Federal Government, it was necessary to include

only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred.

Section 4611(e)(3) of the BBA also specified, for the purpose of determining the premium, that the monthly actuarial rate for enrollees age 65 and over be computed as though the transition would occur for 1998 through 2003 and that $\frac{1}{7}$ of the cost be transferred in 1998, $\frac{2}{7}$ in 1999, $\frac{3}{7}$ in 2000, $\frac{4}{7}$ in 2001, $\frac{5}{7}$ in 2002, and $\frac{6}{7}$ in 2003. Therefore, the transition period for incorporating this home health transfer into the premium was 7 years while the transition period for including these services in the actuarial rate was 6 years.

Section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, also known as the Medicare Modernization Act, or MMA), which amended section 1839 of the Act, requires that, starting on January 1, 2007, the Part B premium a beneficiary pays each month be based on their annual income. Specifically, if a beneficiary’s “modified adjusted gross income” is greater than the legislated threshold amounts (for 2014, \$85,000 for a beneficiary filing an individual income tax return, and \$170,000 for a beneficiary filing a joint tax return) the beneficiary is responsible for a larger portion of the estimated total cost of Part B benefit coverage. In addition to the standard 25 percent premium, these beneficiaries now have to pay an income-related monthly adjustment amount. The MMA made no change to the actuarial rate calculation, and the standard premium, which will continue to be paid by beneficiaries whose modified adjusted gross income is below the applicable thresholds, still represents 25 percent of the estimated total cost to the program of Part B coverage for an aged enrollee. However, depending on income and tax filing status, a beneficiary can now be responsible for 35, 50, 65, or 80 percent of the estimated total cost of Part B coverage, rather than 25 percent. The end result of the higher premium is that the Part B premium subsidy is reduced and less general revenue financing is required for beneficiaries with higher income because they are paying a larger share of the total cost with their premium. That is, the premium subsidy continues to be approximately 75 percent for beneficiaries with income below the applicable income thresholds, but will be reduced for beneficiaries with income above these thresholds. The MMA specified that there be a 5-

year transition to full implementation of this provision. However, section 5111 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) modified the transition to a 3-year period.

Section 4732(c) of the BBA added section 1933(c) of the Act, which required the Secretary to allocate money from the Part B trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the low-income Medicaid beneficiaries who qualify under section 1933 of the Act. This allocation, while not a benefit expenditure, was an expenditure of the trust fund and was included in calculating the Part B actuarial rates through 2002. For 2003 through 2013, the expenditure was made from the trust fund because the allocation was temporarily extended. However, because the extension occurred after the financing was determined, the allocation was not included in the calculation of the financing rates.

A further provision affecting the calculation of the Part B premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA 88) (Pub. L. 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) did not repeal the revisions to section 1839(f) made by MCCA 88.) Section 1839(f) of the Act, referred to as the “hold-harmless” provision, provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the Part B premiums deducted from these benefit payments, the premium increase will be reduced, if necessary, to avoid causing a decrease in the individual’s net

monthly payment. This decrease in payment occurs if the increase in the individual’s social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual’s Part B premiums for December and the following January are deducted from the respective month’s section 202 or 223 benefits. The “hold-harmless” provision does not apply to beneficiaries who are required to pay an income-related monthly adjustment amount.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The Part B premium that is deducted from a particular check is the Part B payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has December’s Part B premium deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection, the reduced premium for the individual for that January and for each of the succeeding 11 months is the greater of either—

- The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the Part B premium for January, at least equal to the preceding November’s monthly benefits, after the deduction of the Part B premium for December; or
- The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an

individual is entitled under section 202 or 223 of the Act do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount is established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual’s monthly benefits.

Individuals who have enrolled in Part B late or who have re-enrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) of the Act are made.

II. Provisions of the Notice

A. Notice of Medicare Part B Monthly Actuarial Rates, Monthly Premium Rates, and Annual Deductible

The Medicare Part B monthly actuarial rates applicable for 2014 are \$209.80 for enrollees age 65 and over and \$218.90 for disabled enrollees under age 65. In section II.B. of this notice, we present the actuarial assumptions and bases from which these rates are derived. The Part B standard monthly premium rate for all enrollees for 2014 is \$104.90. The Part B annual deductible for 2014 is \$147.00. The following are the 2014 Part B monthly premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to \$85,000	Less than or equal to \$170,000	\$0.00	\$104.90
Greater than \$85,000 and less than or equal to \$107,000.	Greater than \$170,000 and less than or equal to \$214,000.	42.00	146.90
Greater than \$107,000 and less than or equal to \$160,000.	Greater than \$214,000 and less than or equal to \$320,000.	104.90	209.80
Greater than \$160,000 and less than or equal to \$214,000.	Greater than \$320,000 and less than or equal to \$428,000.	167.80	272.70
Greater than \$214,000	Greater than \$428,000	230.80	335.70

In addition, the monthly premium rates to be paid by beneficiaries who are

married and lived with their spouse at any time during the taxable year, but file

a separate tax return from their spouse, are as follows:

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to \$85,000	\$0.00	\$104.90
Greater than \$85,000 and less than or equal to \$129,000	167.80	272.70
Greater than \$129,000	230.80	335.70

The Part B annual deductible for 2014 is \$147.00 for all beneficiaries.

B. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for Part B Beginning January 2014

Except where noted, the actuarial assumptions and bases used to determine the monthly actuarial rates and the monthly premium rates for Part B are established by the Office of the Actuary in the Centers for Medicare & Medicaid Services. The estimates underlying these determinations are prepared by actuaries meeting the qualification standards and following the actuarial standards of practice established by the Actuarial Standards Board.

1. Actuarial Status of the Part B Account in the Supplementary Medical Insurance Trust Fund

Under the statute, the starting point for determining the standard monthly

premium is the amount that would be necessary to finance Part B on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The premium rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing was established, but effective for the period in which the financing is set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets must be maintained at a level that is adequate to cover an appropriate degree of variation between actual and projected costs, and the

amount of incurred, but unpaid, expenses. Numerous factors determine what level of assets is appropriate to cover variation between actual and projected costs. The three most important of these factors are: (1) The difference from prior years between the actual performance of the program and estimates made at the time financing was established; (2) the likelihood and potential magnitude of expenditure changes resulting from enactment of legislation affecting Part B costs in a year subsequent to the establishment of financing for that year; and (3) the expected relationship between incurred and cash expenditures. These factors are analyzed on an ongoing basis, as the trends can vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2012 and 2013.

TABLE 1—ESTIMATED ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

Financing period ending	Assets (millions)	Liabilities (millions)	Assets less liabilities (millions)
December 31, 2012	\$66,226	\$18,485	\$47,742
December 31, 2013	75,828	19,209	56,619

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the sum of monthly amounts for: (1) The projected cost of benefits, and (2) administrative expenses for each enrollee age 65 and older, after adjustments to this sum to allow for interest earnings on assets in the trust fund and an adequate contingency margin. The contingency margin is an amount appropriate to provide for possible variation between actual and projected costs and to amortize any surplus assets or unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for 2014 is determined by first establishing per-enrollee cost by type of service from

program data through 2012 and then projecting these costs for subsequent years. The projection factors used for financing periods from January 1, 2011 through December 31, 2014 are shown in Table 2.

As indicated in Table 3, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for 2014 is \$198.42. Based on current estimates, the assets are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to a more appropriate level. The monthly actuarial rate of \$209.80 provides an

adjustment of \$13.53 for a contingency margin and –\$2.15 for interest earnings.

The size of the contingency margin for 2014 is affected by several factors. The largest factor involves the current law formula for physician fees, which is scheduled to result in a reduction in physician fees of 23.7 percent in 2014. For each year from 2003 through 2013, Congress has acted to prevent physician fee reductions from occurring. In recognition of the strong possibility of substantial increase in Part B expenditures that would result from similar legislation to override the decreases in physician fees in 2014, it is appropriate to maintain a significantly larger Part B contingency reserve than would otherwise be

necessary. The asset level projected for the end of 2013 is not adequate to accommodate this contingency.

Two other, smaller factors affect the contingency margin for 2014. Starting in 2011, manufacturers and importers of brand-name prescription drugs have paid a fee that is allocated to the Part B account of the SMI trust. For 2014, the total of these brand-name drug fees is estimated to be \$3 billion. The contingency margin has been reduced to account for this additional revenue.

Another small factor impacting the contingency margin comes from the requirement that certain payment incentives, to encourage the development and use of health information technology (HIT) by Medicare physicians, are to be excluded from the premium determination. HIT bonuses or penalties will be directly offset through transfers with the general fund of the Treasury. The monthly actuarial rate includes an adjustment of –\$3.11 for HIT bonus payments in 2014.

The traditional goal for the Part B reserve has been that assets minus liabilities at the end of a year should represent between 15 and 20 percent of the following year's total incurred expenditures. To accomplish this goal, a 17 percent reserve ratio has been the normal target used to calculate the Part B premium. In view of the strong likelihood of actual expenditures exceeding estimated levels, due to the likelihood of the enactment of legislation after the financing has been set for 2014 as a result of the scheduled 2014 physician update, a contingency reserve ratio in excess of 20 percent of the following year's expenditures would better ensure that the assets of the Part B account can adequately cover the cost of incurred-but-not-reported benefits together with variations between actual and estimated cost levels.

The actuarial rate of \$209.80 per month for aged beneficiaries, as announced in this notice for 2014, reflects the combined net effect of the factors previously described and the projection assumptions listed in Table 2.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons under age 65 who are enrolled in Part B because of entitlement to Social Security disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those with ESRD) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (see Table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program.

As shown in Table 4, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for 2014 is \$234.57. The monthly actuarial rate of \$218.90 also provides an adjustment of –\$3.72 for interest earnings and –\$11.95 for a contingency margin, reflecting the same factors described previously for the aged actuarial rate. Based on current estimates, the assets associated with the disabled Medicare beneficiaries more than sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a negative contingency margin is needed to decrease assets to an appropriate level.

The actuarial rate of \$218.90 per month for disabled beneficiaries, as announced in this notice for 2014, reflects the combined net effect of the factors described previously for aged beneficiaries and the projection assumptions listed in Table 2.

4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative cost growth rate assumptions. The results of those assumptions are shown in Table 5. One set represents increases that are lower and, therefore, more optimistic than the

current estimate. The other set represents increases that are higher and, therefore, more pessimistic than the current estimate. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

As indicated in Table 5, the monthly actuarial rates would result in an excess of assets over liabilities of \$71,024 million by the end of December 2014 under the cost growth rate assumptions used in preparing this report and assuming that the provisions of current law are fully implemented. This amounts to 27.5 percent of the estimated total incurred expenditures for the following year.

Assumptions that are somewhat more pessimistic (and that therefore test the adequacy of the assets to accommodate projection errors) produce a surplus of \$36,697 million by the end of December 2014 under current law, which amounts to 12.8 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of \$96,302 million by the end of December 2014, or 41.5 percent of the estimated total incurred expenditures for the following year.

The previous analysis indicates that the premium and general revenue financing established for 2014, together with existing Part B account assets would be adequate to cover estimated Part B costs for 2014 under current law, even if actual costs prove to be somewhat greater than expected.

5. Premium Rates and Deductible

As determined in accordance with section 1839 of the Act, listed are the 2013 Part B monthly premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to \$85,000	Less than or equal to \$170,000	\$0.00	\$104.90
Greater than \$85,000 and less than or equal to \$107,000.	Greater than \$170,000 and less than or equal to \$214,000.	42.00	146.90
Greater than \$107,000 and less than or equal to \$160,000.	Greater than \$214,000 and less than or equal to \$320,000.	104.90	209.80
Greater than \$160,000 and less than or equal to \$214,000.	Greater than \$320,000 and less than or equal to \$428,000.	167.80	272.70

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Greater than \$214,000	Greater than \$428,000	230.80	335.70

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are listed as follows:

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to \$85,000	\$0.00	\$104.90
Greater than \$85,000 and less than or equal to \$129,000	167.80	272.70
Greater than \$129,000	230.80	335.70

TABLE 2—PROJECTION FACTORS ¹ 12-MONTH PERIODS ENDING DECEMBER 31 OF 2011–2014
[In percent]

Calendar year	Physicians' services		Durable medical equipment	Carrier lab ⁴	Other carrier services ⁵	Outpatient hospital	Home health agency	Hospital lab ⁶	Other intermediary services ⁷	Managed care
	Fees ²	Residual ³								
<i>Aged:</i>										
2011	0.9	2.2	−3.7	−2.8	4.6	8.0	−4.9	5.0	3.1	1.0
2012	−1.1	1.1	0.4	6.4	3.3	6.8	−2.1	3.9	4.6	2.3
2013	−0.1	−0.3	−5.2	−0.5	3.2	1.8	1.7	−2.7	−3.8	1.8
2014	−24.1	9.0	−4.2	3.9	4.0	6.0	0.7	3.6	−10.4	3.2
<i>Disabled:</i>										
2011	0.9	1.4	−2.7	3.1	2.7	7.9	−3.0	6.4	1.4	2.0
2012	−1.1	3.4	2.0	25.8	3.9	9.2	−1.5	5.8	4.8	1.2
2013	−0.1	0.9	−4.5	5.3	3.1	2.7	3.7	−2.5	−3.8	3.6
2014	−24.1	9.1	−4.1	4.1	4.3	6.1	1.6	3.6	−1.6	3.4

¹ All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.

² As recognized for payment under the program.

³ Increase in the number of services received per enrollee and greater relative use of more expensive services.

⁴ Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.

⁵ Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.

⁶ Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.

⁷ Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 3—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FOR FINANCING PERIODS
ENDING DECEMBER 31, 2011 THROUGH DECEMBER 31, 2014
[In dollars]

	Financing periods			
	CY 2011	CY 2012	CY 2013	CY 2014
Covered services (at level recognized):				
Physician fee schedule	82.06	80.19	78.05	64.13
Durable medical equipment	8.47	8.31	7.70	7.32
Carrier lab ¹	4.14	4.30	4.18	4.31
Other carrier services ²	24.90	22.12	22.31	23.01
Outpatient hospital	35.19	36.74	36.57	38.47
Home health	11.33	10.84	10.77	10.78
Hospital lab ³	3.81	3.87	3.68	3.78
Other intermediary services ⁴	14.49	14.81	13.92	12.37
Managed care	57.17	61.71	66.03	69.31
Total services	238.55	242.89	243.22	233.47
Cost sharing:				
Deductible	−6.19	−4.84	−5.63	−5.62
Coinsurance	−31.04	−31.55	−28.77	−25.06
Sequestration of benefits	0.00	0.00	−3.15	−4.05
HIT payment incentives	−0.44	−1.52	−1.88	−3.11
Total benefits	200.88	204.98	203.79	195.62
Administrative expenses	3.28	3.45	3.20	2.80
Incurred expenditures	204.16	208.43	206.99	198.42
Value of interest	−2.53	−2.21	−1.97	−2.15

TABLE 3—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FOR FINANCING PERIODS ENDING DECEMBER 31, 2011 THROUGH DECEMBER 31, 2014—Continued
[In dollars]

	Financing periods			
	CY 2011	CY 2012	CY 2013	CY 2014
Contingency margin for projection error and to amortize the surplus or deficit	29.06	– 6.42	4.78	13.53
Monthly actuarial rate	230.70	199.80	209.80	209.80

¹ Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.

² Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.

³ Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.

⁴ Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FOR FINANCING PERIODS ENDING DECEMBER 31, 2011 THROUGH DECEMBER 31, 2014
[In dollars]

	Financing periods			
	CY 2011	CY 2012	CY 2013	CY 2014
Covered services (at level recognized):				
Physician fee schedule	86.54	86.02	84.59	69.61
Durable medical equipment	16.09	15.91	14.77	14.05
Carrier lab ¹	5.07	6.15	6.30	6.50
Other carrier services ²	26.09	26.13	26.22	27.06
Outpatient hospital	49.20	52.28	52.24	55.00
Home health	10.01	9.58	9.67	9.74
Hospital lab ³	5.36	5.50	5.22	5.37
Other intermediary services ⁴	40.98	42.35	42.00	38.74
Managed care	43.49	49.14	54.95	57.86
Total services	282.82	293.05	295.96	283.93
Cost sharing:				
Deductible	– 5.81	– 4.65	– 5.29	– 5.28
Coinsurance	– 45.97	– 46.82	– 43.64	– 39.17
Sequestration of benefits	0.00	0.00	– 3.72	– 4.79
HIT payment incentives	– 0.41	– 1.57	– 1.99	– 3.32
Total benefits	230.63	240.01	241.31	231.37
Administrative expenses	3.76	4.03	3.76	3.20
Incurred expenditures	234.39	244.05	245.07	234.57
Value of interest	– 5.02	– 3.86	– 2.94	– 3.72
Contingency margin for projection error and to amortize the surplus or deficit	36.93	– 47.69	– 6.63	– 11.95
Monthly actuarial rate	266.30	192.50	235.50	218.90

¹ Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.

² Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.

³ Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.

⁴ Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 5—ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2014

As of December 31,	2012	2013	2014
This projection:			
Actuarial status (in \$ millions):			
Assets	66,226	75,828	89,871
Liabilities	18,485	19,209	18,847
Assets less liabilities	47,742	56,619	71,024
Ratio (in percent) ¹	19.4	23.3	27.5
Low cost projection:			
Actuarial status (in \$ millions):			

TABLE 5—ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2014—Continued

As of December 31,	2012	2013	2014
Assets	66,226	84,654	114,651
Liabilities	18,485	18,228	18,349
Assets less liabilities	47,742	66,426	96,302
Ratio (in percent) ¹	20.3	29.2	41.5
High cost projection:			
Actuarial status (in \$ millions):.			
Assets	66,226	62,815	56,535
Liabilities	18,485	20,654	19,838
Assets less liabilities	47,742	42,161	36,697
Ratio (in percent) ¹	18.4	15.8	12.8

¹ Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent. These estimates are based on the assumption that all provisions of current law will be implemented in full, including the approximately 24.0-percent reduction in Medicare payment rates to physicians required by the statutory "sustainable growth rate" formula.

III. Regulatory Impact Analysis

A. Statement of Need

Section 1839 of the Act requires us to annually announce (that is by September 30th of each year) the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. We also announce the Part B annual deductible because its determination is directly linked to the aged actuarial rate.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social

Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major notices with economically significant effects (\$100 million or more in any 1 year). For 2014, the standard Part B premium rate, the Part B income-related premium rates, and the Part B deductible are the same as the

respective amounts for 2013. As a result, this notice is not economically significant under section 3(f)(1) of Executive Order 12866 and thus, is not a major action under the Congressional Review Act. In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

As discussed earlier, this notice announces that the monthly actuarial rates applicable for 2014 are \$209.80 for enrollees age 65 and over and \$218.90 for disabled enrollees under age 65. It also announces the 2014 monthly Part B premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with a dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to \$85,000	Less than or equal to \$170,000	\$0.00	\$104.90
Greater than \$85,000 and less than or equal to \$107,000.	Greater than \$170,000 and less than or equal to \$214,000.	42.00	146.90
Greater than \$107,000 and less than or equal to \$160,000.	Greater than \$214,000 and less than or equal to \$320,000.	104.90	209.80
Greater than \$160,000 and less than or equal to \$214,000.	Greater than \$320,000 and less than or equal to \$428,000.	167.80	272.70
Greater than \$214,000	Greater than \$428,000	230.80	335.70

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at

any time during the taxable year, but file a separate tax return from their spouse,

are also announced and listed in the following chart:

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to \$85,000	\$0.00	\$104.90
Greater than \$85,000 and less than or equal to \$129,000	167.80	272.70
Greater than \$129,000	230.80	335.70

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than \$7.0 million to \$34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under 65) beneficiaries enrolled in Part B of the Medicare SMI program beginning January 1, 2014. Also, this notice announces the monthly premium for aged and disabled beneficiaries as well as the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. As a result, we are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As we discussed previously, we are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this notice will not have a significant effect on a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2013, that

threshold is approximately \$141 million. This notice does not impose mandates that will have a consequential effect of \$142 million or more on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

For 2014, the standard Part B premium rate, the Part B income-related premium rates, and the Part B deductible are the same as the respective amounts for 2013. Therefore, this notice is not a major rule as defined in 5 U.S.C. 804(2) and is not an economically significant rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

IV. Waiver of Proposed Notice

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such announcements. In doing so, we note that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find, for good cause, that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. The statute establishes the time period for which the premium rates will apply, and delaying publication of the Part B premium rate such that it would not be published before that time would be contrary to the public interest.

Moreover, we find that notice and comment are unnecessary because the formulas used to calculate the Part B premiums are statutorily directed. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments. (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 20, 2013.

Marilyn Tavenner,
Administrator, Centers for Medicare & Medicaid Services.

Approved: October 18, 2013

Kathleen Sebelius,
Secretary, Department of Health and Human Services.

[FR Doc. 2013–25668 Filed 10–28–13; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8054–N]

RIN 0938–AR57

Medicare Program; Part A Premiums for CY 2014 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This annual notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year (CY) 2014. This premium is paid by enrollees age 65 and over who are not otherwise eligible for benefits under Medicare Part A (hereafter known as the "uninsured aged") and by certain disabled individuals who have exhausted other entitlement. The monthly Part A premium for the 12 months beginning January 1, 2014, for these individuals will be \$426. The premium for certain other individuals as described in this notice will be \$234.

DATES: *Effective Date:* This notice is effective on January 1, 2014.

FOR FURTHER INFORMATION CONTACT:

Clare McFarland, (410) 786-6390.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare Hospital Insurance Program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old-Age, Survivors, and Disability Insurance (OASDI) program or the Railroad Retirement Act and do not otherwise meet the requirements for entitlement to Medicare Part A. These “uninsured aged” individuals are uninsured under the OASDI program or the Railroad Retirement Act, because they do not have 40 quarters of coverage under Title II of the Act (or are/were not married to someone who did). (Persons insured under the OASDI program or the Railroad Retirement Act and certain others do not have to pay premiums for Medicare Part A.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium for certain disabled individuals who have exhausted other entitlement. These are individuals who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, but who are no longer entitled to disability benefits and free Medicare Part A coverage because they have gone back to work and their earnings exceed the statutorily defined “substantial gainful activity” amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through section 1818(f) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 1818(d) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services incurred in the upcoming calendar year (CY) (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Medicare Part A. We must then determine the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding CY. If the premium is not a multiple of \$1, the premium is rounded to the nearest multiple of \$1 (or, if it is a multiple of 50 cents but not of \$1, it is rounded to the next highest \$1).

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66) amended section 1818(d) of the Act to provide for a reduction in the premium amount for certain voluntary enrollees (section 1818 and section 1818A of the Act). The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month:

- Had at least 30 quarters of coverage under Title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least 10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for CY 2014 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

II. Monthly Premium Amount for CY 2014

The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement for the 12 months beginning January 1, 2014, is \$426.

The monthly premium for the individuals eligible under Section 1818(d)(4)(B) of the Act, and therefore subject to the 45 percent reduction in the monthly premium, is \$234.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for CY 2014 rounded to the nearest multiple of \$1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of Part A enrollees aged 65 years and over as well as the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for CY 2014 on: (1) Current historical data, and (2) projection assumptions derived from current law and the Mid-Session Review of the President's Fiscal Year 2014 Budget.

We estimate that in CY 2014, 43,923,567 people aged 65 years and over will be entitled to benefits (without premium payment) and that they will incur about \$224.753 billion in benefits and related administrative costs. Thus, the estimated monthly average per capita amount is \$426.41 and the monthly premium is \$426. Subsequently, the full monthly premium reduced by 45 percent is \$234.

IV. Costs to Beneficiaries

The CY 2014 premium of \$426 is approximately 3.40 percent lower than the CY 2013 premium of \$441. We estimate that approximately 626,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. Furthermore, the CY 2014 reduced premium of \$234 is approximately 3.70 percent lower than the CY 2013 premium of \$243. We estimate an additional 55,000 enrollees will pay the reduced premium. Therefore, we estimate that the total aggregate savings to enrollees paying these premiums in CY 2014, compared to the amount that they paid in CY 2013, will be about \$119 million.

V. Waiver of Proposed Notice and Comment Period

We use general notices, rather than notice and comment rulemaking procedures, to make announcements such as this premium notice. In doing so, we acknowledge that, under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking. The agency may also waive notice and comment if there is “good cause,” as defined by the statute. We considered publishing a proposed notice to provide a period for public comment. However, under the APA, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest.

We are not using notice and comment rulemaking in this notification of Medicare Part A premiums for CY 2014 as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves. The APA permits agencies to

waive notice and comment rulemaking when notice and public comment thereon are unnecessary. On this basis, we waive publication of a proposed notice and a solicitation of public comments.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VII. Regulatory Impact Analysis

A. Statement of Need

Section 1818(d) of the Act requires the Secretary of the Department of Health and Human Services (the Secretary) during September of each year to determine and publish the amount to be paid, on an average per capita basis, from the Federal Hospital Insurance Trust Fund for services incurred in the impending calendar year (CY) (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Medicare Part A.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C., Part I, Ch. 8).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major notices with economically significant effects (\$100 million or more in any 1 year). As stated in section IV of this notice, we estimate that the overall effect of the changes in the Part A premium will be a savings to voluntary

enrollees (section 1818 and section 1818A of the Act) of about \$119 million. As a result, this notice is economically significant under section 3(f)(1) of Executive Order 12866 and thus, a major action under the Congressional Review Act. In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than \$7.0 million to \$35.5 million in any 1 year (for details, see the Small Business Administration's Web site at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

Individuals and states are not included in the definition of a small entity. As discussed above, this annual notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year (CY) 2014. As a result, we are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. As discussed above, we are not preparing an analysis for section 1102(b) of the Act, because the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold is approximately \$141 million. This notice does not impose mandates that will have a consequential effect of \$141 million or

more on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this notice does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 20, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 18, 2013.

Kathleen Sebelius,

Secretary.

[FR Doc. 2013–25591 Filed 10–28–13; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8053–N]

RIN 0938–AR59

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2014

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2014 under Medicare's Hospital Insurance Program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts. For CY 2014, the inpatient hospital deductible will be \$1,216. The daily coinsurance amounts for CY 2014 will be: \$304 for the 61st through 90th day of hospitalization in a benefit period; \$608 for lifetime reserve days; and \$152 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

DATES: *Effective Date:* This notice is effective on January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390 for

general information. Gregory J. Savord, (410) 786-1521 for case-mix analysis.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish each year the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year (CY).

II. Computing the Inpatient Hospital Deductible for CY 2014

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding CY, adjusted by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding CY, and adjusted to reflect changes in real case-mix. The adjustment to reflect real case-mix is determined on the basis of the most recent case-mix data available. The amount determined under this formula is rounded to the nearest multiple of \$4 (or, if midway between two multiples of \$4, to the next higher multiple of \$4).

Under section 1886(b)(3)(B)(i)(XX) of the Act, the percentage increase used to update the payment rates for FY 2014 for hospitals paid under the inpatient prospective payment system is the market basket percentage increase, otherwise known as the market basket update, reduced by 0.3 percentage points (see section 1886(b)(3)(B)(xii)(II) of the Act), and an adjustment based on changes in the economy-wide productivity (the multifactor productivity (MFP) adjustment (see section 1886(b)(3)(B)(xi)(II) of the Act). Under section 1886(b)(3)(B)(viii) of the Act, hospitals will receive this update only if they submit quality data as specified by the Secretary of the Department of Health and Services (the Secretary). The update for hospitals that do not submit this data is reduced by

2.0 percentage points. We are estimating that after accounting for those hospitals receiving the lower market basket update in the payment-weighted average update, the calculated deductible will remain the same, as the majority of hospitals submit quality data and receive the full market basket update.

Under section 1886(b)(3)(B)(ii)(VIII) of the Act, the percentage increase used to update the payment rates for FY 2014 for hospitals excluded from the inpatient prospective payment system is as follows:

- For FY 2014, the percentage increase for long term care hospitals is the market basket percentage increase reduced by 0.3 percentage points and the MFP adjustment (see sections 1886(m)(3)(A) and 1886(m)(4)(C) of the Act).
- For FY 2014, the percentage increase for inpatient rehabilitation facilities is the market basket percentage increase reduced by 0.3 percentage points and the MFP adjustment (see sections 1886(j)(3)(C) and 1886(j)(3)(D)(ii) of the Act).
- For FY 2014, the percentage increase used to update the payment rate for psychiatric hospitals is the market basket percentage increase reduced by 0.1 percentage points and the MFP adjustment (see sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act).

The Inpatient Prospective Payment System market basket percentage increase for 2014 is 2.5 percent and the MFP adjustment is 0.5 percent, as announced in the final rule with comment period published in the **Federal Register** on August 19, 2013 entitled, "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2014 Rates; Quality Reporting Requirements for Specific Providers; Hospital Conditions of Participation; Payment Policies Related to Patient Status" (78 FR 50608). Therefore, the percentage increase for hospitals paid under the inpatient prospective payment system is 1.7 percent. The average payment percentage increase for hospitals excluded from the inpatient prospective payment system is 1.94 percent. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for FY 2014 is 1.73 percent.

To develop the adjustment to reflect changes in real case-mix, we first calculated an average case-mix for each hospital that reflects the relative costliness of that hospital's mix of cases

compared to those of other hospitals. We then computed the change in average case-mix for hospitals paid under the Medicare prospective payment system in FY 2013 compared to FY 2012. (We excluded from this calculation hospitals whose payments are not based on the inpatient prospective payment system because their payments are based on alternate prospective payment systems or reasonable costs.) We used Medicare bills from prospective payment hospitals that we received as of July 2013. These bills represent a total of about 7.8 million Medicare discharges for FY 2013 and provide the most recent case-mix data available at this time. Based on these bills, the change in average case-mix in FY 2013 is 0.89 percent. Based on these bills and past experience, we expect the overall case mix change to be 1.0 percent as the year progresses and more FY 2013 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case-mix change that is determined to be real. We estimate that the change in real case mix will be 1.0 percent.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 1.73 percent, and the real case-mix adjustment factor for the deductible is 1.0 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in CY 2014 is \$1,216. This deductible amount is determined by multiplying \$1,184 (the inpatient hospital deductible for CY 2013) by the payment-weighted average increase in the payment rates of 1.0173 multiplied by the increase in real case-mix of 1.01, which equals \$1,216.53 and is rounded to \$1,216.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for CY 2014

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same CY. The increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in CY 2014, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be \$304 (one-fourth of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be \$608 (one-half of the inpatient

hospital deductible); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit

period will be \$152 (one-eighth of the inpatient hospital deductible).

IV. Cost to Medicare Beneficiaries

Table 1 below summarizes the deductible and coinsurance amounts for

CYs 2013 and 2014, as well as the number of each that is estimated to be paid.

TABLE 1—PART A DEDUCTIBLE AND COINSURANCE AMOUNTS FOR CALENDAR YEARS 2013 AND 2014 TYPE OF COST SHARING

	Value		Number paid (in millions)	
	2013	2014	2013	2014
Inpatient hospital deductible	\$1,184	\$1,216	7.91	8.07
Daily coinsurance for 61st–90th Day	296	304	2.04	2.09
Daily coinsurance for lifetime reserve days	592	608	1.02	1.04
SNF coinsurance	148	152	42.10	43.40

The estimated total increase in costs to beneficiaries is about \$870 million (rounded to the nearest \$10 million) due to—(1) the increase in the deductible and coinsurance amounts; and (2) the increase in the number of deductibles and daily coinsurance amounts paid.

V. Waiver of Proposed Notice and Comment Period

The Medicare statute, as discussed previously, requires publication of the Medicare Part A inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services for each CY. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that, under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and we can exercise no discretion in following the formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, we find good cause to waive

publication of a proposed notice and solicitation of public comments.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VII. Regulatory Impact Analysis

A. Statement of Need

Section 1813(b)(2) of the Act requires the Secretary to determine and publish, between September 1 and September 15 of each year, the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year (CY).

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C., Part I, Ch. 8).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major notices with economically significant effects (\$100 million or more in any 1 year). As stated in section IV of this notice, we estimate that the total increase in costs to beneficiaries associated with this notice is about \$870 million due to—(1) the increase in the deductible and coinsurance amounts; and (2) the increase in the number of deductibles and daily coinsurance amounts paid. As a result, this notice is economically significant under section 3(f)(1) of Executive Order 12866 and thus, is a major action under the Congressional Review Act. In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than \$7.0 million to \$35.5 million in any 1 year (for details, see the Small Business Administration's Web site at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

Individuals and states are not included in the definition of a small entity. As discussed above, this annual notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in CY 2014 under Medicare's Hospital Insurance Program (Medicare Part A). As a result, we are not preparing an

analysis for the RFA because the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. As discussed above, we are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. For 2013, that threshold accounting for inflation is approximately \$141 million. This notice does not impose mandates that will have a consequential effect of \$141 million or more on state, local, or tribal governments or on the private sector. However, states may be required to pay the deductibles and coinsurance for dually-eligible beneficiaries.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this notice does not impose any costs on state or local governments, preempt state law or have Federalism implications, the requirements of Executive Order 13132 are not applicable.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 20, 2013.

Marilyn Tavenner,
Administrator, Centers for Medicare & Medicaid Services.

Dated: October 18, 2013.

Kathleen Sebelius,
Secretary.

[FR Doc. 2013-25595 Filed 10-28-13; 11:15 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-N-0001]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 11, 2013, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993-0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <http://www.fda.gov/AdvisoryCommittees/default.htm>; under the heading "Resources for You," click on "Public Meetings at the FDA White Oak Campus." Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Karen Abraham-Burrell, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, FAX: 301-847-8533, email: EMDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at <http://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the safety and efficacy of biologic license application (BLA) 125390, metreleptin for injection, sponsored by Amylin Pharmaceuticals, LLC, a wholly owned subsidiary of Bristol-Myers Squibb. The proposed indication for metreleptin is the treatment of metabolic disorders associated with lipodystrophy, including diabetes mellitus and/or hypertriglyceridemia (elevated triglyceride levels in the blood) in pediatric and adult patients with inherited or acquired lipodystrophy. (Lipodystrophies are rare medical conditions of abnormal loss of the body's fatty tissues.)

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 26, 2013. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 18, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 19, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee

meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen Abraham-Burrell at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 21, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013-25588 Filed 10-29-13; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-N-0001]

Joint Meeting of the Gastrointestinal Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Joint Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of two public advisory committees of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Gastrointestinal Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 9, 2013, from 8 a.m. to 5:30 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (Rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993-0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <http://www.fda.gov/AdvisoryCommittees/default.htm>; under

the heading "Resources for You," click on "Public Meetings at the FDA White Oak Campus." Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Cindy Hong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Building 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, FAX: 301-847-8533, email: GIDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at <http://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committees will discuss two biologics license applications (BLAs) for vedolizumab injection (proposed tradename Entyvio), submitted by Millennium Pharmaceuticals, Inc. BLA 125476 proposes an indication for the treatment of adult patients with moderately to severely active ulcerative colitis who have had an inadequate response to, have lost response to, or were intolerant to either conventional therapy or a tumor necrosis factor-alpha (TNFα) antagonist. BLA 125507 proposes an indication for the treatment of adult patients with moderately to severely active Crohn's disease who have had an inadequate response to, have lost response to, or were intolerant to either conventional therapy or a TNFα antagonist.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending

before the committees. Written submissions may be made to the contact person on or before November 22, 2013. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 14, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 15, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Cindy Hong at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 21, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013-25583 Filed 10-29-13; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 23, 2013, 09:00 a.m. to October 23, 2013, 06:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 1, 2013, 78 FR 60296.

The meeting will be held on November 26, 2013 from 09:00 a.m. to 06:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25681 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Therapeutic Approaches to Genetic Diseases Study Section, October 21, 2013, 8:30 a.m. to October 21, 2013, 3:00 p.m., Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654 which was published in the **Federal Register** on September 26, 2013, 78 FR 59361-59362.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 on November 25, 2013. The meeting time remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25742 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Integrative Physiology of Obesity and Diabetes Study Section, October 24, 2013, 8:00 a.m. to October 25, 2013, 5:00 p.m., Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL, 60611 which was published in the **Federal Register** on October 1, 2013, 78 FR 60297-60299.

The meeting will start on December 19, 2013 at 8:00 a.m. and end on December 20, 2013 at 6:00 p.m. The location remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25761 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Cancer Institute; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, October 15, 2013, 4:00 p.m. to October 16, 2013, 5:00 p.m., Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD, 20852 which was published in the **Federal Register** on September 11, 2013, 78FR55750.

Due to the absence of either an FY 2014 appropriation or Continuing Resolution for the Department of Health and Human Services, the meeting is rescheduled for November 12-13, 2013 from 4:00 p.m. to 5:00 p.m. Additionally, the meeting location has changed to Hilton Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20852. The meeting is closed to the public.

Dated: October 25, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25743 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Cancer Institute; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Subcommittee J—Career Development, October 24, 2013, 8:00 a.m. to October 25, 2013, 6:00 p.m., National Cancer Institute Shady Grove, West Tower, 9609 Medical Center Drive, 7W032-24th & 7W30-25th, Rockville, MD, 20850 which was published in the **Federal Register** on August 16, 2013, 78FR50065.

Due to the absence of either an FY 2014 appropriation or Continuing Resolution for the Department of Health & Human Services, the meeting is rescheduled for November 14, 2013 from 8:00 a.m. to 6:00 p.m. and the location remains the same, however the room has changed to 4E032. The meeting is closed to the public.

Dated: October 25, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25744 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Drug Abuse; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, October 15, 2013, 2:00 p.m. to October 16, 2013, 1:00 p.m., Hilton Garden Inn Washington DC/Bethesda, 7301 Waverly Street, Bethesda, MD 21045 which was published in the **Federal Register** on September 23, 2013, 78 184 FRN2013-22992.

The date, time and location of the meeting are changed to November 13, 2013, 1:30 p.m. to November 14, 2013, 1:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814. The meeting is closed to the public.

Dated: October 25, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25749 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Genetic Variation and Evolution Study Section, October 17, 2013, 8:00 a.m. to October 18, 2013, 2:00 p.m., Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405 which was published in the **Federal Register** on September 23, 2013, 78 FR 184 Pgs. 58323–58324.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. The meeting will start on December 16, 2013 at 10:00 a.m. and end on December 18, 2013 at 6:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25772 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7w530, Bethesda, MD 20892, 240–276–6442, ss537t@nih.gov.

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/sep/sep.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 25, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25745 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Developmental Therapeutics Study Section, October 07, 2013, 08:00 a.m. to October 08, 2013, 05:00 p.m., Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314 which was published in the **Federal Register** on September 10, 2013, 78 FR 55269.

The meeting will start on November 21, 2013 at 07:00 p.m. and end on November 22, 2013 at 06:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25677 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Cancer Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Brain Tumor Consortium.

Date: November 5, 2013.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, Room 7W032 & 034, 9609 Medical Center Drive, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Shamala K. Srinivas, Ph.D., Scientific Review Officer, Office of Referral, Review and Program Coordination,

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Molecular and Cellular Hematology Study Section, October 15, 2013, 08:00 a.m. to October 16, 2013, 06:00 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015 which was published in the **Federal Register** on September 16, 2013, 78 FR 56904–56905.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting will start on December 2, 2013 at 11:00 a.m. and end on December 4, 2013 at 6:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25759 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Hemostasis and Thrombosis Study Section, October 16, 2013, 11:00 a.m. to October 16, 2013, 06:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on September 23, 2013, 78 FR 184 Pgs. 58323–58324.

The meeting will start on December 18, 2013 at 12:00 p.m. and end on December 18, 2013 at 5:00 p.m.

The meeting location remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25758 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Integrative and Clinical Endocrinology and Reproduction Study Section, October 23, 2013, 08:00 a.m. to October 23, 2013, 05:00 p.m., Sheraton Silver Spring Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910 which was published in the **Federal Register** on October 01, 2013, 78 FR 60294–60296.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 on December 17, 2013. The meeting will start at 10:00 a.m. and end at 6:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25774 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 21, 2013, 03:30 p.m. to October 21, 2013, 06:00 p.m., Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654 which was published in the **Federal Register** on September 26, 2013, 78 FR 59362.

The meeting will be held at the National Institutes of Health 6701 Rockledge Drive, Bethesda, MD 20892 on November 25, 2013. The meeting time remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25762 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Drug Abuse; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; R25 and T32 AIDS Applications.

Date: December 11, 2013.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4245, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–451–4530, el6r@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; CEBRA: Cutting-Edge Basic Research Awards (R21).

Date: December 12, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Scott A. Chen, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4234, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–443–9511, chensc@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 25, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25753 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Language and Communication Study Section, October 11, 2013, 8:00 a.m. to October 11, 2013, 6:00 p.m., Doubletree Hotel Washington, 1515 Rhode Island Ave. NW., Washington, DC 20005 which was published in the **Federal Register** on September 17, 2013, 78 FR 180 Pgs. 57169–57170.

The meeting will start on December 13, 2013 at 8:00 a.m. and will end on December 13, 2013 at 6:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25662 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 18, 2013, 10:30 a.m. to October 18, 2013, 5:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 25, 2013, 78 FR 186 pgs. 59040–59041.

The meeting will start on December 3, 2013 at 8:00 a.m. and end on December 3, 2013 at 5:00 PM. The meeting location remains the same. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25652 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Mechanisms of Sensory, Perceptual, and Cognitive Processes Study Section, October 03, 2013, 08:00 a.m. to October 04, 2013, 05:30 p.m., Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037 which was published in the **Federal Register** on September 10, 2013, 78 FR 55266–55267.

The meeting will be held at the Bahia Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109 on November 8, 2013, starting at 08:00 a.m. and ending at 06:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25683 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Biophysics of Neural Systems Study Section, October 3, 2013, 8:00 a.m. to October 3, 2013, 7:00 p.m., Hotel Monaco, 2 North Charles Street, Baltimore, MD 21201 which was published in the **Federal Register** on September 9, 2013, 78 FR 174 pgs. 55086–55087.

The meeting will start on November 20, 2013 at 8:00 a.m. and will end on November 20, 2013 at 7:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25656 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Psychosocial Development, Risk and Prevention Study Section, October 3, 2013, 8:00 a.m. to October 4, 2013, 6:00 p.m., Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852 which was published in the **Federal Register** on September 9, 2013, 78 FR 174 Pgs. 55086–55087.

The meeting will be held at the Hotel Helix, 1430 Rhode Island Ave. NW., Washington, DC 20005. The meeting will start on December 5, 2013 at 8:00 a.m. and end on December 6, 2013 at 5:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25775 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Hypertension and Microcirculation Study Section, October 10, 2013, 08:00 a.m. to October 10, 2013, 07:30 p.m., Washington Hilton Hotel, 1919 Connecticut Ave. NW., Washington, DC 20009 which was published in the **Federal Register** on September 17, 2013, 78 FR 180 Pgs. 57168–57169.

The meeting will start on December 19, 2013 at 7:30 a.m. and end on December 19, 2013 at 8:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25769 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 31, 2013, 8:00 a.m. to November 1, 2013, 1:00 p.m., One Washington Circle Hotel, One Washington Circle, Washington, DC 20037 which was published in the **Federal Register** on October 22, 2013, 78 FR 204 Pg. 62641.

The meeting will start on November 22, 2013 at 8:00 a.m. and will end on November 22, 2013 at 6:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25659 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 11, 2013, 1:00 p.m. to October 11, 2013, 6:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 18, 2013, 78 FR 181 Pg. 57400.

The meeting will start on November 19, 2013 at 11:00 a.m. and will end on November 19, 2013 at 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25657 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Molecular Genetics A Study Section, October 21, 2013, 08:30 a.m. to October 22, 2013, 01:30 p.m., Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037 which was published in the **Federal Register** on September 26, 2013, 78 FR 187 Pgs. 59361–59362.

The meeting will start on November 17, 2013 at 8:30 a.m. and end on November 17, 2013 at 7:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25773 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 22, 2013, 02:00 p.m. to October 22, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 01, 2013, 78 FR 60295.

The meeting will be held on December 10, 2013. The meeting time and location remain the same. The meeting is closed to the public.

Dated: October 25, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25679 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, October 21, 2013, 8:00 a.m. to October 22, 2013, 4:00 p.m., Hilton Washington/Rockville, 1750 Rockville Pike, Regency Ballroom, Rockville, MD, 20852 which was published in the **Federal Register** on September 27, 2013, 78 FR 59707.

The meeting is amended to change the date of the meeting from Oct. 21–22, 2013 to Nov. 22, 2013 and Nov. 25, 2013. Telephone Conference Call, National Institutes of Health, 6700B Rockledge Dr., Bethesda, MD 20817 from 8:00 a.m. to 5:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25672 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Drug Abuse; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, October 15, 2013, 9:00 a.m. to October 15, 2013, 11:00 p.m., Hilton Garden Inn Washington DC/Bethesda, 7301 Waverly Street, Bethesda, MD 21045 which was published in the **Federal Register** on September 23, 2013, 78 FR 184 FRN2013–22992.

The date, time and location of the meeting are changed to November 13, 2013, 10:30 a.m. to November 13, 2013, 12:30 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814. The meeting is closed to the public.

Dated: October 25, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25748 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section, October 02, 2013, 08:00 a.m. to October 03, 2013, 05:00 p.m., Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654 which was published in the **Federal Register** on September 16, 2013, 78 FR 179 Pgs. 56904–56905.

The meeting will be held at the Hyatt Regency Baltimore, 300 Light Street, Baltimore, MD 21202. The meeting will start on November 20, 2013 at 8:00 a.m. and end on November 21, 2013 at 5:00 PM. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25765 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Pathobiology of Kidney Disease Study Section, October 07, 2013, 08:00 a.m. to October 07, 2013, 07:00 p.m., Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 10, 2013, 78 FR 55268–55270.

The meeting will be held on November 18, 2013. The meeting time and location remain the same. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25760 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Center for Complementary & Alternative Medicine; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the National Center for Complementary and Alternative Medicine Special Emphasis Panel, October 16, 2013, 2:00 p.m. to October 16, 2013, 6:00 p.m., National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 which was published in the **Federal Register** on September 12, 2013, Vol. 78, No. 177.

The meeting of the Special Emphasis Panel ZAT1 PK 28, PAR 10–163 R34, will be held on November 19, 2013, instead of October 16, 2013, at noon and will end at 3:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 24, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25650 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Aging; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Behavior and Social Science of Aging Review Committee, October 03, 2013, 04:30 p.m. to October 04, 2013, 02:00 p.m., Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 11, 2013, 78 FR 55752.

The meeting has been changed to December 10, 2013, 03:00 p.m. to 07:00 p.m. and December 11, 2013, 09:00 a.m. to 07:00 p.m. This meeting is now a teleconference. The meeting is closed to the public.

Dated: October 25, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25746 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Acute Neural Injury and Epilepsy Study Section, October 16, 2013, 08:00 a.m. to October 16, 2013, 06:30 p.m., Washington Plaza Hotel, 10 Thomas Circle, Washington, DC 20005 which was published in the **Federal Register** on September 17, 2013, 78 FR 180 Pgs. 57168–57169.

The meeting will start on December 11, 2013 at 8:00 a.m. and end on December 11, 2013 at 6:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25770 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Prevention and Treatment

Date: November 7, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence Ka-Yun Ng, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, ngkl@csr.nih.gov.

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of 2013.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25778 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 8, 2013, 7:00 a.m. to October 8, 2013, 8:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 10, 2013, 78 FR 175 pgs. 55268–55270.

The meeting will start on November 21, 2013 at 7:00 a.m. and end on November 22, 2013 at 8:00 p.m. The location remains the same. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25651 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Social Sciences and Population Studies B Study Section, October 23, 2013, 08:00 a.m. to October 23, 2013, 06:00 p.m., Embassy Suites Baltimore Downtown, 222 St. Paul Place, Baltimore, MD, 21202 which was published in the **Federal Register** on October 01, 2013, 78 FR 190 Pgs. 60294–60296.

The meeting will be held at National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. The meeting will start on December 18 at 08:30 a.m. and

end on December 18, 2013 at 5:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25771 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, October 23, 2013, 08:00 a.m. to October 24, 2013, 06:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on October 01, 2013, 78 FR 60294.

The meeting notice is amended to change the date of the meeting from Oct. 23-24, 2013 to Nov. 12-13, 2013, from the Hyatt Regency Hotel to the Sheraton Silver Spring Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. The meeting is closed to the public.

Dated: October 25, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25673 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: November 12-13, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6706 Democracy Blvd., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Barbara J. Nelson, Ph.D., Scientific Review Officer, Office of Grants Management & Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Room 1080, 1 Dem. Plaza, Bethesda, MD 20892-4874, 301-435-0806, nelsonbj@mail.nih.gov.

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 25, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25750 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Host Interactions with Bacterial Pathogens Study Section, October 18, 2013, 8:00 a.m. to October 18, 2013, 6:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 24, 2013, 78 FR 185 Pgs. 58547-58548.

The meeting will start on November 15, 2013 at 8:00 a.m. and will end on November 15, 2013 at 6:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25661 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical Neuroscience and Neurodegeneration Study Section, October 10, 2013, 08:00 a.m. to October 10, 2013, 06:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 12, 2013, 78 FR 177 Pgs. 56239.

The meeting will start on December 13, 2013 at 9:00 a.m. and end December 13, 2013 at 6:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25767 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Skeletal Biology Structure and Regeneration Study Section, October 8, 2013, 8:00 a.m. to October 9, 2013, 5:30 p.m., Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231 which was published in the **Federal Register** on October 3, 2013, 78 FR 192 Pgs. 61376-61377.

The meeting will start on November 19, 2013 at 7:30 a.m. and will end on November 19, 2013 at 7:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25658 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Skeletal Muscle and Exercise Physiology Study Section, October 10, 2013, 8:00 a.m. to October 11, 2013, 5:00 p.m., Residence Inn Washington DC, 1199 Vermont Avenue NW., Washington, DC 20005 which was published in the **Federal Register** on September 11, 2013, 78 FR 55753.

The meeting will be held at the Virginian Suites Arlington, 1500 Arlington Blvd., Arlington, VA 22209. The meeting will start on November 11, 2013 at 8:00 a.m. and end on November 12, 2013 at 1:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25678 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Drug Abuse; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, October 16, 2013, 08:00 a.m. to October 16, 2013, 05:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on September 17, 2013, 79 FR 180 FRN2013-22502.

The date, time and location of the meeting are changed to November 21, 2013, 9:00 a.m. to November 21, 2013, 6:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814. The meeting is closed to the public.

Dated: October 25, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25751 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Lung Injury, Repair, and Remodeling Study Section, October 7, 2013, 8:00 a.m. to October 7, 2013, 6:30 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 10, 2013, 78 FR 175 pgs. 55268-55270.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. The meeting will start on November 01, 2013 at 9:00 a.m. and will end on November 03, 2013 at 5:00 p.m. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25653 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section, October 7, 2013, 8:00 a.m. to October 8, 2013, 3:00 p.m., Hilton Old Town Alexandria, Alexandria, VA 22314 which was published in the **Federal Register** on September 11, 2013, 78 FR 176 Pgs. 55752-55753.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. The meeting will start on December 17, 2013 at 8:00 a.m. and end on December 18, 2013 at 5:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25766 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 21, 2013, 7:30 a.m. to October 21, 2013, 6:00 p.m., Hilton Long Beach and Executive Center, 701 West Ocean Boulevard, Long Beach, CA 90831 which was published in the **Federal Register** on October 1, 2013, 78 FR 190 Pgs. 60294-60296.

The meeting will be held at the Embassy Suites at Chevy Chase Pavilion, 4300 Military Rd. NW., Washington, DC 20015. The meeting will start on December 13, 2013 at 7:30 a.m. and end on December 13, 2013 at 6:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25776 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Macromolecular Structure and Function B Study Section, October 17, 2013, 8:00 a.m. to October 17, 2013, 7:00 p.m., Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654 which was published in the **Federal Register** on September 23, 2013, 78 FR 184 pgs. 58323-58324.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. The meeting will start on December 04, 2013 at 9:30 a.m. and will end on December 04, 2013 at 7:30 p.m. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25655 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Biomedical Imaging and Bioengineering; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, October 10–11, 2013, 03:00 p.m.–06:00 p.m., National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, which was published in the **Federal Register** on July 18, 2013, 78 FR 42970.

The meeting notice is amended to change the date from October 10–11, 2013, to November 26, 2013 at 10:00 a.m. to 06:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25674 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Drug Abuse; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, October 17, 2013, 08:00 a.m. to October 17, 2013, 05:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on September 17, 2013, 78 FR 180 FRN2013–22502.

The date, time and the location of the meeting are changed to November 22, 2013, 8:30 a.m. to November 22, 2013, 3:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814. The meeting is closed to the public.

Dated: October 25, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25752 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Adult Psychopathology and Disorders of Aging Study Section, October 17, 2013, 08:00 a.m. to October 18, 2013, 05:00 p.m., Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202 which was published in the **Federal Register** on September 23, 2013, 78 FR 58324.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting will start on December 4, 2013 at 09:00 a.m. and end on December 5, 2013 at 03:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25676 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 22, 2013, 9:00 a.m. to October 23, 2013, 6:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 1, 2013, 78 FR 60295.

The meeting will start on December 10, 2013 and end on December 11, 2013. The meeting time and location remain the same. The meeting is closed to the public.

Dated: October 25, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25680 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Risk, Prevention and Intervention for Addictions Study Section, October 03, 2013, 08:00 a.m. to October 04, 2013, 05:30 p.m., Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036 which was published in the **Federal Register** on September 09, 2013, 78 FR 55086–55087.

The meeting will be held on December 9, 2013, 8:00 a.m. to 7:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25764 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Drug Abuse; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, October 15, 2013, 11:00 a.m. to October 15, 2013, 2:00 p.m., Hilton Garden Inn Washington DC/Bethesda, 7301 Waverly Street, Bethesda, MD 21045 which was published in the **Federal Register** on September 23, 2013, 78 FR 184 FRN2013–22992.

The date, time and location of the meeting are changed to November 13, 2013, 9:00 a.m. to November 13, 2013, 10:15 a.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814. The meeting is closed to the public.

Dated: October 25, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25747 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Integrative Nutrition and Metabolic Processes Study Section, October 10, 2013, 08:00 a.m. to October 10, 2013, 06:00 p.m., Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 12, 2013, 78 FR 194563.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 on December 16, 2013, starting at 09:00 a.m. and ending at 07:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25675 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Cellular Aspects of Diabetes and Obesity Study Section, October 17, 2013, 08:00 a.m. to October 17, 2013, 05:00 p.m., Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814 which was published in the **Federal Register** on September 23, 2013, 78 FR 58323-58324.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 on December 13, 2013. The meeting will start at 9:00 a.m. and end at 5:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25763 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Neurobiology of Motivated Behavior Study Section, October 14, 2013, 08:00 a.m. to October 15, 2013, 01:00 p.m., Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202 which was published in the **Federal Register** on September 16, 2013, 78 FR 179 Pgs. 56904-56905.

The meeting will start on December 2, 2013 at 8:00 a.m. and end on December 3, 2013 at 1:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25768 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Vector Biology Study Section, October 09, 2013, 8:30 a.m. to October 09, 2013, 06:00 p.m., The River Inn, 924 25th Street NW., Washington, DC 20037 which was published in the **Federal Register** on September 10, 2013, 78 FR 175 Pgs. 55266-55267.

The meeting will be held at National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. The meeting will start on November 23, 2013 at 10:00 a.m. and end on November 23, 2013 at 6:00 p.m. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25777 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section, October 3, 2013, 8:00 a.m. to October 4, 2013, 5:00 p.m., Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202 which was published in the **Federal Register** on September 9, 2013, 78 FR 55086.

The meeting will start on November 14, 2013 and end on November 15, 2013. The time and location remain the same. The meeting is closed to the public.

Dated: October 25, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25682 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Cognition and Perception Study Section, October 10, 2013, 8:00 a.m. to October 11, 2013, 5:00 p.m., Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009 which was published in the **Federal Register** on September 11, 2013, 78 FR 176 Pgs. 55752-55753.

The meeting will be held at the Renaissance Washington, 999 Ninth St. NW., Washington, DC 20001. The meeting will start on December 5, 2013 at 8:30 a.m. and will end on December 6, 2013 at 5:00 p.m. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-25649 Filed 10-29-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Genomics, Computational Biology and Technology Study Section, October 16, 2013, 8:30 a.m. to October 17, 2013, 1:00 p.m., Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611 which was published in the **Federal Register** on September 17, 2013, 78 FR 180 Pgs. 57168–57169.

The meeting will start on December 18, 2013 at 8:30 a.m. and will end on December 19, 2013 at 3:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25660 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Clinical and Integrative Diabetes and Obesity Study Section, October 10, 2013, 8:00 a.m. to October 10, 2013, 5:00 p.m., The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611 which was published in the **Federal Register** on September 11, 2013, 78 FR 176 pgs. 55752–55753.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. The meeting will start on December 18, 2013 at 7:00 a.m. and will end on December 19, 2013 at 7:00 p.m. The meeting is closed to the public.

Dated: October 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25654 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 22, 2013, 02:00 p.m. to October 22, 2013, 04:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 01, 2013, 78 FR 190 Pgs. 60294–60296.

The meeting will start on December 11, 2013 at 01:00 p.m. and end on December 11, 2013 at 3:00 p.m.

The meeting location remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25779 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Cardiovascular Differentiation and Development Study Section, October 09, 2013, 08:00 a.m. to October 09, 2013, 06:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 10, 2013, 78 FR 55267.

The meeting will be held on December 10, 2013 from 08:00 p.m. to 06:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 25, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–25684 Filed 10–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection**

[Docket No. USCBP–2013–0041]

Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) will meet on November 15, 2013, in Washington, DC. The meeting will be open to the public.

DATES: COAC will meet on Friday, November 15, from 1:00 p.m. to 5:00 p.m. EST. Please note that the meeting may close early if the committee has completed its business.

Pre-Registration: Meeting participants may attend either in person or via webinar after pre-registering using a method indicated below:

—For members of the public who plan to attend the meeting in person, please register either online at https://apps.cbp.gov/te_reg/index.asp?w=12; by email to tradeevents@dhs.gov; or by fax to 202–325–4290 by 5:00 p.m. EST on November 13, 2013.

—For members of the public who plan to participate via webinar, please register online at https://apps.cbp.gov/te_reg/index.asp?w=13 by 5:00 p.m. EST on November 13, 2013.

Feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered and later require cancellation, please do so in advance of the meeting by accessing one (1) of the following links: https://apps.cbp.gov/te_reg/cancel.asp?w=12 to cancel an in person registration, or https://apps.cbp.gov/te_reg/cancel.asp?w=13 to cancel a webinar registration.

ADDRESSES: The meeting will be held at the U.S. International Trade Commission (USITC) in Main Hearing Room 101, 500 E Street SW., Washington, DC 20436. All visitors to the USITC Building must show a state-issued ID or Passport to proceed through the security checkpoint for admittance to the building.

For information on facilities or services for individuals with disabilities or to request special assistance at the

meeting, contact Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection at 202-344-1661 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee prior to the formulation of recommendations as listed in the "Agenda" section below.

Comments must be submitted in writing no later than November 7, 2013, and must be identified by Docket No. USCBP-2013-0041, and may be submitted by one of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email*: Tradeevents@dhs.gov. Include the docket number in the subject line of the message.

- *Fax*: 202-325-4290.

- *Mail*: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. Do not submit personal information to this docket.

Docket: For access to the docket to read background documents or comments received by the COAC, go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

There will be multiple public comment periods held during the meeting on November 15, 2013. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP Web page, http://www.cbp.gov/xp/cgov/trade/trade_outreach/coac/coac_13_meetings/, at the time of the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone 202-344-1440; facsimile 202-325-4290.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act*, 5 U.S.C. App. (Pub. L. 92-463). The COAC provides advice to the Secretary of Homeland Security, the Secretary of the Treasury,

and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS and the Department of the Treasury.

Agenda

The COAC will hear from the following project leaders and subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed on those topics:

1. The One U.S. Government at the Border Subcommittee: Review and discuss recommendations from the Food and Drug Administration (FDA) Working Group, review and discuss an update on the progress of the Environmental Protection Agency (EPA) Working Group, and review and discuss a case study regarding the Partner Government Agency—Message Set (PGA-MS).

2. The Global Supply Chain Subcommittee: Review and discuss recommendations regarding the Air Cargo Advance Screening (ACAS) pilot and address the next steps regarding land border issues in the area of Beyond the Border and 21st Century Initiatives.

3. The Trade Modernization Subcommittee: Review and discuss recommendations addressing the Automated Commercial Environment (ACE) Development and Deployment Schedule and recommendations of the Role of the Broker Work Group.

4. COAC Survey Team: Review and Discuss Preliminary Results of the COAC 2013 Annual Trade Efficiency Survey and discuss feedback on past COAC recommendations.

5. The Trusted Trader Subcommittee: Review and discuss the Customs-Trade Partnership Against Terrorism C-TPAT criteria for exporters.

6. The Trade Enforcement and Revenue Collection Subcommittee: Review and discuss the work completed to date on the Regulatory Audit Working Group's findings on the planned enhancements for the Focused Assessment process and the Intellectual Property Rights Working Group's effort to further evaluate the use of the Global Shipment Identification Number (GSIN) as a possible tool for use in Distribution Chain Management in Intellectual Property Rights Compliance.

7. The Export Subcommittee: Review and discuss subcommittee recommendations and the analysis of the 2013 COAC Export Survey Results.

Dated: October 24, 2013.

Maria Luisa Boyce,

Senior Advisor for Private Sector Engagement, Office of Trade Relations.

[FR Doc. 2013-25705 Filed 10-29-13; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-R-2013-N095; 1265-0000-10137 S3]

Tualatin River National Wildlife Refuge, Washington and Yamhill Counties, OR; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Tualatin River National Wildlife Refuge (refuge) final comprehensive conservation plan (CCP). The CCP includes our finding of no significant impact (FONSI) for the associated environmental assessment (EA). In this final CCP, we describe how we will manage the refuge for the next 15 years.

ADDRESSES: You may view or request a printed or CD-ROM copy of the final CCP and FONSI by any of the following methods.

Web site: Download the CCP at: www.fws.gov/tualatinriver/refugeplanning.htm.

Email: FW1PlanningComments@fws.gov. Include "Tualatin River NWR CCP/EA" in the subject line.

Fax: Attn: Erin Holmes, Project Leader, (503) 625-5947.

U.S. Mail: Erin Holmes, Project Leader, Tualatin River National Wildlife Refuge, 19255 SW Pacific Highway, Sherwood, OR 97140.

In-Person Viewing or Pickup: Tualatin River National Wildlife Refuge, 19255 SW Pacific Highway, Sherwood, OR 97140.

FOR FURTHER INFORMATION CONTACT: Erin Holmes, Project Leader, (503) 625-5944.

SUPPLEMENTARY INFORMATION

Introduction

With this notice, we finalize the CCP process for the refuge. The Service began this process by publishing a notice of intent in the **Federal Register** (77 FR 25676; November 3, 2010). We also released the draft CCP/EA to the public through the **Federal Register**, announcing a 30-day public comment

period in a notice of availability (77 FR 64538; October 22, 2012).

The refuge encompasses approximately 2,217 acres in Oregon's northern Willamette Valley, with herbaceous and scrub-shrub wetlands, and wet prairie, oak savanna, woodland, mixed deciduous forest, riparian forest, riverine, and stream habitats.

We announce our decision and the availability of the FONSI for the final CCP in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment in the draft CCP/EA.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Comments

We identified three alternatives for refuge management in the draft CCP/EA, including Alternative 1, our no action alternative. We solicited public comments on the draft CCP/EA, and included a summary of the comments we received and our responses in the final CCP.

Selected Alternative

The final CCP includes detailed information about the refuge, our planning process, the issues we addressed, and Alternative 2, the management alternative we selected for implementation on the refuge. Under Alternative 2 we will balance our management of the refuge's competing management needs and issues. Brief

descriptions of key management actions described in Alternative 2 follow:

- We will combine the existing fragmented habitats into larger contiguous blocks of native habitat types, and restore relic or disappearing habitats.
- Using hydrological modeling, and historic vegetation and soil information, we will restore and increase riparian forest acreage and mixed forest acreage over the next 15 years.
- Restored forest habitats will advance our efforts to increase riparian corridor connectivity, and provide habitat for neotropical songbirds and other species.
- Restored relic oak habitat acreage will increase to provide habitat for imperiled oak-dependent wildlife.
- The acreage of managed wetland ponds will decrease to restore more natural wet prairie habitats to historic vegetation.
- Scrub-shrub wetland acreage will increase.
- Stream habitat will be restored to facilitate fish passage, and benefit other aquatic species and migratory and resident wildlife.
- The refuge will expand public use opportunities including hunting and fishing.
- On the Sherwood Unit, existing trails will remain the same, with an additional Environmental Education Off-Trail Study Area and a Nature Explore Area.
- Additional photography blinds will be constructed to maximize the photography experience and minimize wildlife disturbances.
- A youth waterfowl hunting program will be developed.
- A hunt management plan will be developed in close coordination with the State, to determine the season, blind locations, and other details.
- We will monitor and adjust the hunt program as needed to provide quality waterfowl hunting and healthy habitat.
- We will develop a fishing program with an educational component on the River Overlook.

The CCP will guide us in managing and administering the refuge for the next 15 years. Alternative 2, as we described in the draft CCP, is the foundation for the final CCP. The draft and final CCP and related documents may be found on our Web site (see **ADDRESSES**).

Dated: May 16, 2013.

Robyn Thorson,

Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2013–25600 Filed 10–29–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–R–2013–N233;
FXRS12650900000–145–FF09R20000]

New Deadlines for Public Comment on Draft Environmental Documents

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We announce new deadlines for the public to submit input on several draft documents prepared in accordance with the National Environmental Policy Act. We are taking this action in regard to draft documents and scoping periods that were open for comment during the recent lapse in Federal appropriations. To ensure that we receive the best possible input to guide our decisionmaking, we want to provide the public adequate time to review and comment on the draft documents.

DATES: See **SUPPLEMENTARY INFORMATION** for the new comment period end dates.

ADDRESSES: See each original **Federal Register** notice for information on where to submit comments. The **Federal Register** citations and links to the notices are in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: See the contact information in the original **Federal Register** notices. The **Federal Register** citations and links to the notices are in **SUPPLEMENTARY INFORMATION**.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), published notices in the **Federal Register** in August, September, and October that announced the availability of various documents for public review. These documents included a draft environmental impact statement (EIS)/environmental impact report and draft environmental assessments (EA) prepared in accordance with the National Environmental Policy Act, as amended (NEPA) (42 U.S.C. 4321 et seq.), and related documents, such as draft comprehensive conservation plans (CCP). The **Federal Register** notices directed interested parties to contact Service personnel and Web sites for information about these draft documents. As a result of the recent lapse in Federal appropriations, these personnel and Web sites were unavailable for 16 days.

To ensure compliance with our responsibilities under NEPA and to provide the public increased access to Service sources of information, we are allowing additional time for public

input on these draft documents. We are also extending the comment periods for scoping for an upcoming CCP and EIS for one national wildlife refuge and an

upcoming CCP and EA for another refuge and for either an EIS or EA for a proposed habitat conservation plan. The following table provides relevant

information that will help the public get access to the draft documents and submit comments:

Title of Federal Register notice	Federal Register citation	New comment period end date	Web link
Rocky Mountain Arsenal National Wildlife Refuge, Commerce City, CO; Comprehensive Conservation Plan and Environmental Impact Statement; Two Ponds National Wildlife Refuge, Arvada, CO; Comprehensive Conservation Plan and Environmental Assessment.	78 FR 48183; August 7, 2013.	November 15, 2013	http://www.gpo.gov/fdsys/pkg/FR-2013-08-07/pdf/2013-19052.pdf .
South Bay Salt Pond Restoration Project, Phase 2 (Ponds R3, R4, R5, S5, A1, A2W, A8, A8S, A19, A20, and A21) at the Don Edwards National Wildlife Refuge; Intent To Prepare an Environmental Impact Statement/Environmental Impact Report.	78 FR 56921; September 16, 2013.	December 2, 2013	http://www.gpo.gov/fdsys/pkg/FR-2013-09-16/pdf/2013-22438.pdf .
Habitat Conservation Plan for the Community of Los Osos, San Luis Obispo County, CA; Notice of Intent.	78 FR 57651; September 19, 2013.	November 20, 2013	http://www.gpo.gov/fdsys/pkg/FR-2013-09-19/pdf/2013-22778.pdf .
Notice of Availability of the Draft Southeast Missouri Ozarks Regional Restoration Plan and Environmental Assessment.	78 FR 57875; September 20, 2013.	December 4, 2013	http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/pdf/2013-22953.pdf .
DeSoto and Boyer Chute National Wildlife Refuges; Washington County, Nebraska, and Harrison and Pottawattamie Counties, Iowa; Draft Environmental Assessment and Comprehensive Conservation Plan.	78 FR 57876; September 20, 2013.	November 8, 2013	http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/pdf/2013-22956.pdf .
Cokeville Meadows National Wildlife Refuge, Lincoln County, WY; Draft Comprehensive Conservation Plan and Environmental Assessment.	78 FR 58340; September 23, 2013.	November 4, 2013	http://www.gpo.gov/fdsys/pkg/FR-2013-09-23/pdf/2013-23107.pdf .
Golden Eagles; Programmatic Take Permit Application; Draft Environmental Assessment; Shiloh IV Wind Project, Solano County, California.	78 FR 59710; September 27, 2013.	November 29, 2013	http://www.gpo.gov/fdsys/pkg/FR-2013-09-27/pdf/2013-23732.pdf .
Big Muddy National Fish and Wildlife Refuge, Authorized Within the Twenty Counties That Lie Along the Missouri River From Kansas City to St. Louis, MO; Draft Environmental Assessment and Comprehensive Conservation Plan.	78 FR 60306; October 1, 2013.	November 20, 2013	http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23733.pdf .

For information about these draft documents and related issues, contact the person listed in the relevant notice under **FOR FURTHER INFORMATION CONTACT**.

Authority: We issue this notice under the authority of the National Environmental Policy Act, as amended (42 U.S.C. 4321 et seq.).

Dated: October 25, 2013.

Tina A. Campbell,
Chief, Division of Policy and Directives Management.

[FR Doc. 2013-25738 Filed 10-29-13; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2013-N224;
FXES11130800000-134-FF08E00000]

Endangered and Threatened Species; Permits Issued

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

DATES: The permit issuance dates are under **SUPPLEMENTARY INFORMATION**.

SUMMARY: We, the U.S. Fish and Wildlife Service, have issued the following permits to conduct certain activities with endangered species under the authority of the Endangered Species Act, as amended (Act). With some exceptions, the Act prohibits activities with listed species unless a

Federal permit is issued that allows such activity.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Marquez, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W-2606, Sacramento, CA 95825; 760-431-9440 (telephone); or daniel_marquez@fws.gov (email).

SUPPLEMENTARY INFORMATION: We have issued the following permits in response to recovery permit applications we received under the authority of section 10 of the Act, as amended (16 U.S.C. 1531 et seq.). We provide this notice under section 10(c) of the Act. Each permit listed below was issued only after we determined that it was applied for in good faith; that granting the permit would not be to the disadvantage of the listed species; and that the terms and conditions of the permit were consistent with purposes and policy set forth in the Act.

Applicant name	Permit No.	Date issued	Expiration date
BIO-WEST, INCORPORATED	809232	1/24/13	3/31/15
KUS, BARBARA E.	829554	3/29/13	5/30/15
AECOM	820658	2/22/13	6/20/15
MANTECH SRS TECHNOLOGIES INC.	097845	3/22/13	3/7/16
POINT REYES BIRD OBSERVATORY	807078	3/8/13	3/7/16
FOURNIER, JOELLE J	213726	3/22/13	3/21/16

Applicant name	Permit No.	Date issued	Expiration date
FAMOLARO, PETER C	813431	4/5/13	4/4/16
BARRINGER, DEBRA S	89964A	4/12/13	4/11/16
AMALONG, MATTHEW L	89998A	5/3/13	5/2/16
TAYLOR, JARED P	91235A	5/3/13	5/2/16
THE CENTER FOR NATURAL LANDS MANAGEMENT	221411	4/12/13	10/10/16
BERKLEY, JASON L	009015	3/22/13	3/21/17
LSA ASSOCIATES, INC.	777965	3/22/13	3/21/17
KLEIN, MICHAEL W.	039305	4/5/13	4/4/17
KAMADA, DANA K.	799568	5/3/13	5/2/17
PRIEST, JEFFREY D.	840619	5/3/13	5/2/17
JAMES, ROBERT A.	003269	6/28/13	6/27/17
HOUSE, DEBORAH J.	844027	2/1/13	1/31/16
NERHUS, BARRY S	74785A	2/1/13	1/31/16
STRAUSS, EMILIE A.	227263	2/1/13	1/31/16
AVOCET RESEARCH ASSOCIATES	786728	2/8/13	2/7/16
EAST BAY ZOOLOGICAL SOCIETY	85448A	4/5/13	4/4/16
SHANAHAN, SETH A	231424	4/5/13	4/4/16
LIU, LEONARD Y	94998A	5/3/13	5/2/16
KENDRICK, JENNIFER L	76732A	5/31/13	5/30/16
MUDRY, NATHAN WAYNE	89496A	5/31/13	5/30/16
WHITTALL, JUSTEN BRYANT	195891	3/15/13	3/14/17
SAN DIEGO NATURAL HISTORY MUSEUM	75988A	3/22/13	3/21/17
CREEKSIDE CENTER FOR EARTH OBSERVATION	30659A	2/22/13	2/6/15
POWER ENGINEERS, INC.	64546A	6/28/13	8/16/15
ODELL, MELISSA C	56889A	4/5/13	3/8/16
PATTON, ROBERT T.	789255	4/5/13	4/4/16
TATARIAN, PATRICIA J.	802089	1/8/13	1/7/17
SHAFFER, HOWARD BRADLEY	094642	1/16/13	1/15/17
WOLFF, DAVID K.	090849	1/25/13	1/24/17
SANTA BARBARA ZOOLOGICAL FOUNDATION	79454A	2/1/13	1/31/17
CHRISTOPHER, SUSAN V.	058073	2/8/13	2/7/17
INNECKEN, SHIRLEY M	82480A	2/8/13	2/7/17
WONG, TODD J	90002A	2/8/13	2/7/17
ROSSI, AVIVA J	80553A	3/8/13	3/7/17
WITHAM, CAROL W.	799570	3/8/13	3/7/17
UNIVERSITY OF CALIFORNIA SACRAMENTO	192702	3/15/13	3/14/17
ROSS, LAUREN ELIZABETH	78621A	3/22/13	3/21/17
GIBSON & SKORDAL	795935	3/29/13	3/27/17
BROWN, RYAN M	90000A	3/28/13	3/28/17
FARMER, MICHAEL J.	195304	3/29/13	3/28/17
TEMPLE, DANIELLE LOLENE	85424A	3/29/13	3/28/17
MONK & ASSOCIATES INCORPORATED	776608	4/5/13	4/4/17
EICH, INGRID I.	092469	4/12/13	4/11/17
CALIFORNIA DEPT OF WATER RESOURCES	835365	4/26/13	4/25/17
ROGERS, DAVID CHRISTOPHER	796284	4/25/13	4/25/17
WILKERSON, CULLEN A.	179036	5/3/13	5/2/17
VOLLMAR NATURAL LANDS CONSULTING	035336	5/31/13	5/30/17
STOKES, DREW CRANDALL	168927	6/28/13	6/27/17
MORRISON, MICHAEL L.	797315	6/28/13	6/27/17
BRUNGRABER, CAESARA WENDIN	14231A	2/8/13	8/25/14
DUNN, CINDY MARCELLA	29658A	3/29/13	2/6/15
UNIVERSITY OF ARIZONA	086593	1/25/13	1/24/17
PUGH, DALLAS RYAN	79192A	2/1/13	1/31/17
HENRY, RACHEL	82483A	2/8/13	2/7/17
FAULKNER, DAVID K.	838743	2/22/13	2/21/17
SEAY, STEPHANIE M	170528	3/15/13	3/14/17
DICUS, JOHN W.	839960	4/5/13	4/4/17
HAGAR ENVIRONMENTAL SCIENCE	089980	4/12/13	4/11/17
OBERHOFF, DWAYNE N.	180579	4/12/13	4/11/17
BUREAU OF LAND MANAGMENT, HOLLISTER FIELD OFFICE	166383	5/3/13	5/2/17
USFWS-STOCKTON FWO	188803	5/31/13	12/31/15

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to Daniel

Marquez (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this notice is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Michael Long

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2013-25690 Filed 10-29-13; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Geological Survey****[GX14GG009950000]****Scientific Earthquake Studies Advisory Committee (SESAC)****AGENCY:** U.S. Geological Survey.**ACTION:** Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its next meeting at Stanford University, in Palo Alto, California. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will receive reports on the status of activities of the Program and progress toward Program goals and objectives. The Committee will assess this information and provide guidance on the future undertakings and direction of the Earthquake Hazards Program. Focus topics for this meeting include budget sequestration, rock mechanics research, induced seismicity, earthquake early warning and national earthquake hazard mapping.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: November 6–7th, 2013, commencing at 8:30 a.m. on the first day and adjourning at 1:00 p.m. on November 7, 2013.

Contact: Dr. William Leith, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6786, wleith@usgs.gov.

Dated: October 22, 2013.

William Leith,*Designated Federal Officer.*

[FR Doc. 2013–25618 Filed 10–29–13; 8:45 am]

BILLING CODE P

Evaluation Council (NEPEC) will hold a one-and-a-half-day meeting on November 4 and 5, 2013, at the U.S. Geological Survey (USGS) in Menlo Park, California. The Council is comprised of members from academia and the Federal Government. The Council shall advise the Director of the U.S. Geological Survey on proposed earthquake predictions, on the completeness and scientific validity of the available data related to earthquake predictions, and on related matters as assigned by the Director. Additional information about the Council may be found at: <http://earthquake.usgs.gov/aboutus/nepec/>.

At the meeting, the Council will receive several briefings on the history and current state of scientific investigations of earthquake processes in and around the San Andreas fault near the town of Parkfield in central California, and will be asked to advise the USGS on priorities for instrumentation and scientific investigations in the future. The Council will also hear updates on past topics of discussion, including work with social and behavioral scientists on improving hazard and risk messages; development of improved methods for calculation of short-term aftershock probabilities; USGS collaborative work with the Collaboratory for Study of Earthquake Predictability (CSEP); status of an updated Uniform California Earthquake Rupture Forecast (UCERF3); and on the delivery of near-real-time earthquake information by the National Earthquake Information Center (NEIC).

A draft meeting agenda is available from the Executive Secretary on request (contact information below), and will be posted to the Web site (above) when finalized. In order to ensure sufficient seating and hand-outs, it is requested that visitors pre-register by contacting the Executive Secretary by November 1. Members of the public wishing to make a statement to the Council should provide notice of that intention by November 1 so that time may be allotted in the agenda.

DATES: The meeting will be held in Building 3 of the USGS campus at 345 Middlefield Road, Menlo Park, California. The meeting will commence in the early afternoon of Monday, November 4, 2013, and continue the following day, November 5, 2013, beginning at 9:00 a.m. and adjourning at or before 4:00 p.m. Times are approximate. Guests are encouraged to contact the Executive Secretary for a copy of the agenda and instructions for parking and locating the meeting room.

Contact: Dr. Michael Blanpied, Executive Secretary, National Earthquake Prediction Evaluation Council, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6696, Email: mblanpied@usgs.gov.

Dated: October 21, 2013.

Michael Blanpied,*Designated Federal Officer.*

[FR Doc. 2013–25616 Filed 10–29–13; 8:45 am]

BILLING CODE P**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[LLCAC06900 L17110000.AL0000 LXSS025B0000]****Call for Nominations for the Bureau of Land Management's Carrizo Plain National Monument Advisory Committee, CA****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Call for nominations.

SUMMARY: The Bureau of Land Management (BLM) is soliciting nominations from the public to fill positions on the Carrizo Plain National Monument Advisory Committee (MAC). MAC members provide advice and recommendations to the BLM on the management of public lands in the Carrizo Plain National Monument.

ADDRESSES: Nominations should be sent to the Monument Manager, Bureau of Land Management, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308, CA 93308.

FOR FURTHER INFORMATION CONTACT:

Johna Hurl, Monument Manager, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308, 661–391–6093, jhurl@blm.gov or John Kelley, Carrizo Program Support Technician, at 661–391–6088, jtkelley@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The MAC provides representative citizen counsel and advice to the Secretary of the Interior through the BLM with respect to the revision and implementation of the comprehensive plan for the Carrizo Plain National Monument.

The MAC consists of 10 members:

DEPARTMENT OF THE INTERIOR**Geological Survey****[GX14GG009950000]****National Earthquake Prediction Evaluation Council (NEPEC)****AGENCY:** U.S. Geological Survey, Interior.**ACTION:** Notice of meeting.

SUMMARY: Pursuant to Public Law 96–472, the National Earthquake Prediction

(1) A member of, or nominated by, the San Luis Obispo County Board of Supervisors;

(2) A member of, or nominated by, the Kern County Board of Supervisors;

(3) A member of, or nominated by, the Carrizo Native American Advisory Council;

(4) A member of, or nominated by, the Central California Resource Advisory Council;

(5) A member representing individuals or companies authorized to graze livestock within the Monument; and

(6) Five members with recognized backgrounds reflecting:

(a) The purposes for which the Monument was established; and

(b) The interests of other stakeholders, including the general public, who are affected by or interested in the planning and management of the Monument.

Terms of three present MAC members (two public-at-large and one San Luis Obispo County Board of Supervisors) expire on November 15, 2013.

Individuals may nominate themselves or others. Nominees must be residents of the counties or neighboring county in which the MAC has jurisdiction. The BLM will evaluate nominees based on their education, training, and experience and their knowledge of the geographical resource. The following must accompany nominations received in this call for nominations:

- Letters of reference from represented interests or organizations;
- A completed background information nomination form; and
- Any other information that speaks to the nominee's qualifications.

Nominations will be accepted for a 45-day period beginning the date this notice is published.

Authority: 43 CFR 1784.4–1.

Gabriel Garcia,

Field Manager, Bakersfield Field Office.

[FR Doc. 2013–25788 Filed 10–29–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000. L1420000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially

filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

FOR FURTHER CONTACT INFORMATION:

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by email at mmontoya@blm.gov, for assistance. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours.

SUPPLEMENTARY INFORMATION:

Indian Meridian, Oklahoma (OK)

The plat, representing the dependent resurvey and survey in Township 22 North, Range 9 East, of the Indian Meridian, accepted May 15, 2013, for Group 210 OK.

The Supplemental Plat, representing the dependent resurvey and survey in Township 5 North, Range 7 East, of the Indian Meridian, accepted August 5, 2013, OK.

The plat, in three sheets, representing the dependent resurvey and survey in Township 29 North, Range 23 East, of the Indian Meridian, accepted September 24, 2013, for Group 219 OK.

New Mexico Principal Meridian, New Mexico (NM)

The plat, representing the dependent resurvey and survey in Township 21 North, Range 9 East, of the New Mexico Principal Meridian, accepted July 18, 2013, for Group 1151 NM.

The plat, representing the dependent resurvey and survey in Township 6 North, Range 15 West, of the New Mexico Principal Meridian, accepted May 28 18, 2013, for Group 1141 NM.

The plat, representing the dependent resurvey and survey in Township 12 North, Range 4 East, of the New Mexico Principal Meridian, accepted September 16, 2013, for Group 1134 NM.

The plat, in two sheets, representing the dependent resurvey and survey in Township 17 South, Range 16 West, of the New Mexico Principal Meridian NM, accepted September 24, 2013, for Group 1146 NM.

The Supplemental Plat, representing the dependent resurvey and survey in Township 23 South, Range 18 West, of the New Mexico Principal Meridian, accepted August 7, 2013 NM.

The Supplemental Plat, representing the dependent resurvey and survey in Township 23 South, Range 19 West, of the New Mexico Principal Meridian, accepted August 7, 2013 NM.

These plats are scheduled for official filing 30 days from the notice of publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this

office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of Protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Robert A. Casias,

Deputy State Director, Cadastral Survey/ GeoSciences.

[FR Doc. 2013–25692 Filed 10–29–13; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW03000.L14300000.EU0000; 14–08807]

Notice of Realty Action; Modified Competitive Sealed-Bid Sale of Public Land at Schoolhouse Butte (N–85116), Humboldt County, NV; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice corrects the date that the Bureau of Land Management will open sealed bids for this public land sale. The original notice, which published on September 25, 2013 (78 FR 59055), incorrectly stated the date.

On page 59055, column 2, line 4 below the chart, which reads, “November 25, 2013,” is hereby corrected to read, “November 26, 2013.”

Gene Seidlitz,

District Manager, Winnemucca.

[FR Doc. 2013–25781 Filed 10–29–13; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR**Bureau of Reclamation**

[XXXR0680R1 RR.R0336A1R5WRMP01.03
RR01113000]

**Notice of Intent To Prepare an
Environmental Impact Statement and
Public Scoping Meetings for the
Keechelus Reservoir-to-Kachess
Reservoir Conveyance and Kachess
Inactive Storage, Yakima River Basin
Water Enhancement Project, Integrated
Water Resource Management Plan,
Kittitas County, Washington**

AGENCY: Bureau of Reclamation,
Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation intends to prepare an Environmental Impact Statement (EIS) for the Keechelus Reservoir-to-Kachess Reservoir Conveyance and the Kachess Reservoir Inactive Storage projects. The Washington State Department of Ecology will be a joint lead agency with the Bureau of Reclamation in the preparation of this EIS. The Bureau of Reclamation is requesting public comment and agency input to identify significant issues or other alternatives to be addressed in the EIS.

DATES: Submit written comments on the scope of the EIS on or before December 16, 2013.

Two scoping meetings, combined with open houses each day, will be held on the following dates and times:

- November 20, 2013, 1:30 p.m. to 3:30 p.m., and 5:00 p.m. to 7:00 p.m., Yakima, WA.
- November 21, 2013, 1:30 p.m. to 3:30 p.m., and 5:00 p.m. to 7:00 p.m., Cle Elum, WA.

ADDRESSES: Send written scoping comments, requests to be added to the mailing list, or requests for sign language interpretation for the hearing impaired or other special assistance needs to Ms. Candace McKinley, Environmental Program Manager, Bureau of Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, WA 98901; or email yrbwep@usbr.gov.

The scoping meetings and open houses will be located at:

- Yakima—Yakima Area Arboretum, 1401 Arboretum Way, Yakima, WA 98901.
- Cle Elum—U.S. Forest Service (Cle Elum Ranger District Conference Room), 803 W 2nd Street, Cle Elum, WA 98922.

FOR FURTHER INFORMATION CONTACT: Ms. Candace McKinley, Bureau of Reclamation, Columbia-Cascades Area

Office, 1917 Marsh Road, Yakima, WA 98901; telephone (509) 575-5848, ext. 232; facsimile (509) 454-5650; email yrbwep@usbr.gov. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FedRelay) at 1-800-877-8339 TTY/ASCII to contact the above individual during normal business hours. The FedRelay is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. Information on this project may also be found at: <http://www.usbr.gov/pn/programs/yrbwep/index.html>.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation (Reclamation) is issuing this notice pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 *et seq.*; the Council on Environmental Quality's (CEQ) regulations for implementing NEPA, 43 CFR Parts 1500 through 1508; the Department of the Interior's NEPA regulations, 43 CFR Part 46, and the Washington State Environmental Policy Act.

Background

On July 9, 2013, the Record of Decision (ROD) for the Final Programmatic EIS (PEIS) for the Yakima River Basin Integrated Water Resource Management Plan (Integrated Plan) was signed. In the ROD, the Reclamation selected the Integrated Plan Alternative for implementation. The Integrated Plan Alternative is comprised of seven elements which were considered in the PEIS:

1. Reservoir Fish Passage;
2. Structural and Operational Changes;
3. Surface Water Storage;
4. Groundwater Storage;
5. Habitat/Watershed Protection and Enhancement;
6. Enhanced Water Conservation; and
7. Market Reallocation of Water Resources.

As described in the PEIS, Reclamation and the Washington State Department of Ecology (Ecology) will complete project-level, site-specific environmental review for actions within the Integrated Plan once the agencies are ready to move forward each action or groups of actions. For instance, with regard to the present NOI, Reclamation and Ecology have determined that it is appropriate to initiate the environmental review process with regard to the Keechelus Reservoir-to-Kachess Reservoir Conveyance and Kachess Reservoir Inactive Storage projects.

These actions were previously evaluated at a programmatic level of analysis in the Integrated Plan PEIS (see chapters 2 through 5 of the PEIS available at: <http://www.usbr.gov/pn/programs/yrbwep/reports/FPEIS/fpeis.pdf>). That PEIS examined the effects of the overall Integrated Plan Alternative, which included the Keechelus Reservoir-to-Kachess Reservoir Conveyance and the Kachess Reservoir Inactive Storage projects. Now the agencies will prepare a project-level EIS for the Keechelus Reservoir-to-Kachess Reservoir Conveyance and the Kachess Reservoir Interactive Storage projects and will tier to the Integrated Plan PEIS as provided for in the Council on Environmental Quality Regulations (40 CFR 1502.20, Tiering). The project-level environmental analysis to be conducted in this EIS will expand upon and add detail to those analyses already completed in the Integrated Plan PEIS.

The proposed, site specific actions to be evaluated in the Keechelus Reservoir-to-Kachess Reservoir Conveyance and Kachess Reservoir Inactive Storage EIS are:

1. Transfer water through a tunnel from the Keechelus watershed to Kachess Reservoir. Two alternatives have been identified for a tunnel to convey water from Keechelus watershed to Kachess Reservoir. One would include construction of a new outlet works at the north end of Keechelus Dam connecting to a 10–12 foot-diameter, 3.7-mile-long, gravity flow tunnel. The other would include construction of a diversion structure on the Yakima River about 8,000 feet downstream of Keechelus Dam, connecting to a 10–12 foot-diameter, 3.2-mile-long, gravity flow tunnel. Both tunnel alternatives would discharge into Kachess Reservoir through a new structure located on the west shore; and
2. Release an additional 200,000 acre-feet of water from Kachess Reservoir during severe droughts by accessing inactive storage through additional outlet facilities. A substantial volume of water stored in Kachess Reservoir is currently inaccessible because it is below the elevation of the outlet works. This is referred to as inactive storage. An alternative being considered to access the inactive storage in Kachess Reservoir includes a new outlet works at a lower elevation in the reservoir connected by a tunnel to a pump station that would discharge to the Kachess River.

The objectives of these proposed actions are to increase the total water supply available from the Keechelus watershed for irrigation and instream flow, provide additional water for

proratable irrigation districts during severe drought conditions, and create more normal flows in the upper Yakima River between Keechelus Dam and Lake Easton to improve fish habitat.

At this time, there are no known Indian Trust Assets or environmental justice issues associated with the Proposed Actions.

Special Assistance for Public Scoping and Open House Meetings

If special assistance is required to participate in the public scoping and open house meetings, please contact Ms. Candace McKinley, Bureau of Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, WA 98901; telephone (509) 575-5848, ext. 232; facsimile (509) 454-5650; email yrbwep@usbr.gov. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FedRelay) at 1-800-877-8339 TTY/ASCII to contact the above individual during normal business hours. The FedRelay is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. All meeting facilities are physically accessible to people with disabilities.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 24, 2013.

Lorri J. Lee,

Regional Director, Pacific Northwest Region.

[FR Doc. 2013-25689 Filed 10-29-13; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[XXXXR0680R1 RR.R0336A1R5WRMP01.03 RR01113000]

Notice of Intent To Prepare an Environmental Impact Statement and Public Scoping Meetings for the Cle Elum Reservoir Pool Raise, Yakima River Basin Water Enhancement Project, Integrated Water Resource Management Plan, Kittitas County, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation intends to prepare an Environmental Impact Statement (EIS) on the Cle Elum Reservoir Pool Raise project. The Washington State Department of Ecology will be a joint lead agency with the Bureau of Reclamation in the preparation of this EIS, which also will be used to comply with requirements of the Washington State Environmental Policy Act (SEPA). The Bureau of Reclamation is requesting public comment and agency input to identify significant issues or other alternatives to be addressed in the EIS.

DATES: Submit written comments on the scope of the environmental impact statement on or before December 16, 2013.

Two scoping meetings, combined with open houses each day, will be held on the following dates and times:

- November 20, 2013, 1:30 p.m. to 3:30 p.m., and 5:00 p.m. to 7:00 p.m., Yakima, WA.
- November 21, 2013, 1:30 p.m. to 3:30 p.m., and 5:00 p.m. to 7:00 p.m., Cle Elum, WA.

ADDRESSES: Send written scoping comments, requests to be added to the mailing list, or requests for sign language interpretation for the hearing impaired or other special assistance needs to Ms. Candace McKinley, Environmental Program Manager, Bureau of Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, WA 98901; or email yrbwep@usbr.gov.

The scoping meetings and open houses will be located at:

- Yakima—Yakima Area Arboretum, 1401 Arboretum Way, Yakima, WA 98901.
- Cle Elum—U.S. Forest Service (Cle Elum Ranger District Conference Room), 803 W 2nd Street, Cle Elum, WA 98922.

FOR FURTHER INFORMATION CONTACT: Ms. Candace McKinley, Bureau of

Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, WA 98901; telephone (509) 575-5848, ext. 232; facsimile (509) 454-5650; email yrbwep@usbr.gov. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FedRelay) at 1-800-877-8339 TTY/ASCII to contact the above individual during normal business hours. The FedRelay is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. Information on this project may also be found at <http://www.usbr.gov/pn/programs/yrbwep/index.html>.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation (Reclamation) is issuing this notice pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 *et seq.*; the Council on Environmental Quality's (CEQ) regulations for implementing NEPA, 43 CFR parts 1500 through 1508; the Department of the Interior's NEPA regulations, 43 CFR part 46, and the Washington State Environmental Policy Act.

Background

On July 9, 2013, the Record of Decision (ROD) for the Final Programmatic EIS (PEIS) for the Yakima River Basin Integrated Water Resource Management Plan (Integrated Plan) was signed. In the ROD, the Reclamation selected the Integrated Plan Alternative for implementation. The Integrated Plan Alternative is comprised of seven elements which were considered in the PEIS:

1. Reservoir Fish Passage;
2. Structural and Operational Changes;
3. Surface Water Storage;
4. Groundwater Storage;
5. Habitat/Watershed Protection and Enhancement;
6. Enhanced Water Conservation; and
7. Water Market Reallocation of Water Resources.

As described in the PEIS, the Reclamation and the Washington State Department of Ecology (Ecology) will complete project-level, site-specific environmental review for actions within the Integrated Plan once the agencies are ready to move forward each action or groups of actions. Reclamation and Ecology have determined that it is appropriate to initiate the environmental review process with regard to the Cle Elum Reservoir Pool Raise.

This action was previously evaluated at a programmatic level of analysis in

the Integrated Plan PEIS (see chapters 2 through 5 of the PEIS available at: www.usbr.gov/pn/programs/yrbwep/reports/FPEIS/fpeis.pdf). The PEIS examined the effects of the overall Integrated Plan Alternative, which included the Cle Elum Reservoir Pool Raise Project as part of the Structural and Operational Changes element. Now the agencies will prepare a project-level EIS for the Cle Elum Reservoir Pool Raise Project and will tier to the Integrated Plan PEIS as provided for in the Council on Environmental Quality Regulations (40 CFR 1502.20, Tiering). The project-level environmental analysis to be conducted in this EIS will expand upon and add detail to those analyses already completed in the Integrated Plan PEIS.

The proposed action to be evaluated in the Cle Elum Reservoir Pool Raise EIS is to modify the radial gates at Cle Elum Dam to provide an additional 14,600 acre-feet of storage capacity. This modification would raise the pool level by approximately 3 feet. The objective of this action is to use the additional water stored to provide increased seasonal releases from Cle Elum Reservoir to improve streamflows for fish. The Cle Elum Pool Raise Project is authorized in Yakima River Basin Water Enhancement Project (Sec. 1206, Pub. L. 103-43).

At this time, there are no known Indian Trust Assets or environmental justice issues associated with the proposed action.

Special Assistance for Public Scoping and Open House Meetings

If special assistance is required to participate in the public scoping and open house meetings, please contact Ms. Candace McKinley, Bureau of Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, WA 98901; telephone (509) 575-5848, ext. 232; facsimile (509) 454-5650; email yrbwep@usbr.gov. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FedRelay) at 1-800-877-8339 TTY/ASCII to contact the above individual during normal business hours. The FedRelay is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. All meeting facilities are physically accessible to people with disabilities.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that

your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 24, 2013.

Lozzi J. Lee,

Regional Director, Pacific Northwest Region.

[FR Doc. 2013-25691 Filed 10-29-13; 8:45 am]

BILLING CODE 4310-MN-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-841]

Certain Computer and Computer Peripheral Devices, and Components Thereof, and Products Containing Same; Commission Decision to Review an Initial Determination; Schedule for Filing Written Submissions Including Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in the entirety the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on August 2, 2013, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 2, 2012, based on a complaint filed by Technology Properties Limited, LLC ("TPL") of Cupertino, California. 77 FR 26041 (May 2, 2012). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent Nos. 6,976,623 ("the '623 patent"), 7,162,549 ("the '549 patent"), 7,295,443 ("the '443 patent"), 7,522,424 ("the '424 patent"), 6,438,638 ("the '638 patent"), and 7,719,847 ("the '847 patent"). The complaint further alleges the existence of a domestic industry. The notice of investigation named twenty-one respondents, some of whom have since settled from the investigation. As a result of these settlements, the '638 patent is no longer at issue, as it has not been asserted against the remaining respondents. The remaining respondents are Acer Inc. of New Taipei City, Taiwan ("Acer"); Canon Inc. of Tokyo, Japan; Hewlett-Packard Company of Palo Alto, California ("HP"); HiTi Digital, Inc. of New Taipei City, Taiwan; Kingston Technology Company, Inc. of Fountain Valley, California ("Kingston"); Newegg, Inc. and Rosewill Inc., both of City of Industry, California ("Newegg/Rosewill"); and Seiko Epson Corporation of Nagano, Japan.

On October 4, 2012, the ALJ issued a *Markman* order construing disputed claim terms of the asserted patents. Order No. 23. On January 7-11, 2013, the ALJ conducted a hearing, and on August 2, 2013, the ALJ issued the final ID. The ALJ found that TPL demonstrated the existence of a domestic industry, as required by 19 U.S.C. 1337(a)(2), through TPL's licensing investment under 19 U.S.C. 1337(a)(3)(C). ID at 152-55. The ALJ rejected TPL's showing based upon OnSpec Electronic, Inc.'s research and development, and engineering investments for section 337(a)(3)(C), as well as subsections (a)(3)(A) and (a)(3)(B). *Id.* at 155-57.

The ALJ found that the respondents had not shown that any of the asserted patent claims are invalid. However, the ALJ found that TPL demonstrated infringement of the '623 patent, and not the other patents. With respect to the '623 patent, the ALJ found that TPL demonstrated direct infringement of the asserted apparatus claims (claims 1-4 and 9-12). Accordingly, the ALJ found a violation of section 337 by Acer, Kingston and Newegg/Rosewill (collectively, "the '623 respondents") as to these apparatus claims of the "623 patent.

On August 19, 2013, the parties filed petitions for review. TPL's petition challenges the ALJ's noninfringement determinations for the '443, '424, and '847 patents. TPL did not petition for review of the ALJ's noninfringement determination for the '549 patent. The '623 respondents challenge one of the ALJ's claim constructions, and independently challenge the ALJ's finding that the asserted claims of the '623 patent are not anticipated by, or obvious in view of, three pieces of prior art. The '623 respondents also challenge the ALJ's finding that TPL demonstrated the existence of a domestic industry, and subscribe to the analysis presented by the respondents against whom the '623 patent was not asserted.

The respondents against whom the '623 patent was not asserted contingently challenge TPL's evidence of expenditures, as well as the nexus between those expenditures and the asserted patents, for purposes of showing a domestic industry under section 337(a)(3)(C). They also argue that "[t]here is no evidence that TPL's licensees' efforts relate to 'an article protected by' any of the asserted patents." Resp'ts' Pet. 42, 54–56. The respondents against whom the '623 patent was not asserted also argue that the four patents asserted against them are invalid as anticipated or obvious in view of the prior art. They also make additional non-infringement arguments for the three patents asserted against them for which TPL has petitioned for review (the '443, '424 and '847 patents).

Respondent HP filed a short petition for review on its own behalf. HP argues for a narrow interpretation of articles "protected by" an asserted patent. HP Pet. 5.

On August 27, 2013, the parties filed responses to each other's petitions.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in its entirety.

In connection with the Commission's review, the parties are asked to brief only the issues enumerated below. See 19 CFR 210.43(b)(2).

(1) Discuss, in light of the statutory language, legislative history, the Commission's prior decisions, and relevant court decisions, including *InterDigital Communications, LLC v. ITC*, 690 F.3d 1318 (Fed. Cir. 2012), 707 F.3d 1295 (Fed. Cir. 2013) and *Microsoft Corp. v. ITC*, Nos. 2012–1445 & –1535, 2013 WL 5479876 (Fed. Cir. Oct. 3, 2013), whether establishing a domestic industry based on licensing under 19 U.S.C. 1337(a)(3)(C) requires proof of

"articles protected by the patent" (*i.e.*, a technical prong). If so, please identify and describe the evidence in the record that establishes articles protected by the asserted patents.

(2) Discuss the construction of "accessible in parallel" in view of the prosecution history of the '623 patent (including the Examiner's Statement of Reasons for Allowance, *see Salazar v. Proctor & Gamble Co.*, 414 F.3d 1342, 1347 (Fed. Cir. 2005)), and whether the asserted patent claims are infringed and not invalid based upon that construction. Invalidity arguments not dependent on that claim construction should not be briefed.

(3) Comment on whether the respondents' invalidity evidence and analysis as to the Pro II system, the Uno Mas article, the Kaneshiro patent, and the '928 Publication, and TPL's evidence and analysis as to the technical prong of the domestic industry requirement, were undisputed. Please cite all evidence in the record that supports your position.

(4) Discuss whether TPL demonstrated that the products accused of infringing the '443, '424, and '847 patents receive or interface with SD cards that operate in a four-bit-bus mode, and if so, whether the accused products infringe the asserted claims.

(5) If the Commission were to find that the accused products infringe the '443, '424, and '847 patents, discuss whether the SD specification invalidates the asserted claims of those patents.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. (December 1994).

If the Commission contemplates some form of remedy, it must consider the

effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions as set forth above. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainants are also requested to submit proposed remedial orders for the Commission's consideration. The complainants are also requested to state the date that the asserted patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Thursday, November 7, 2013 and responses to the Commission's questions should not exceed 75 pages. Reply submissions must be filed no later than the close of business on Friday, November 15, 2013, and such replies should not exceed 50 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR

210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-841") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42-46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42-46).

By order of the Commission.

Issued: October 24, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013-25643 Filed 10-29-13; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Agency Information Collection Activities; Revision of a Previously Approved Collection, with Change; Comments Requested: COPS Progress Report

ACTION: 60-Day Notice.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a previously approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until

[insert the date 60 days from the date this notice is published in the **Federal Register**]. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ashley Hoornstra, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a previously approved collection, with change; comments requested.

(2) *Title of the Form/Collection:* COPS Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Under the Violent Crime and Control Act of 1994, the U.S. Department of Justice COPS Office would require the completion of the COPS Progress Report by recipients of COPS hiring and non-hiring grants. Grant recipients must complete this report in order to inform COPS of their

activities with their awarded grant funding.

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:

It is estimated that approximately 9428 annual, quarterly, and final report respondents can complete the report in an average of 25 minutes.

(5) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,928 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: October 25, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013-25701 Filed 10-29-13; 8:45 am]

BILLING CODE 4410-AT-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Law Enforcement Officer's Injury or Occupational Disease and Notice of Law Enforcement Officer's Death

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, "Notice of Law Enforcement Officer's Injury or Occupational Disease and Notice of Law Enforcement Officer's Death," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before November 29, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201306-1240-006

(this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: As appropriate, a respondent files a Notice of Law Enforcement Officer's Injury or Occupational Disease, Form CA-721, or Notice of Law Enforcement Officer's Death, Form (CA-722), when seeking Federal Employees' Compensation Act (5 U.S.C. 8191 et seq.) benefits for a non-Federal law enforcement officer's injury, occupational illness, or death. The forms provide the OWCP with basic information needed to process a claim made for injury, illness, or death. This ICR has been classified as a revision, because—in accordance with Department of the Treasury requirements for all Federal benefits payments to be made electronically—Forms CA-721 and CA-722 have been changed to include space and instructions for claimants to provide direct deposit information. In addition, rather than requesting the claimant's signature, Form CA-722 has been revised to request the signature of the person filing the claim. Both forms have also been revised to include an accommodation statement informing claimants with mental or physical limitations to contact the OWCP, Division of Federal Employees' Compensation if they need further assistance with the claims process.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA

and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240-0022. The current approval is scheduled to expire on October 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 5, 2013 (78 FR 40513).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240-0022. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-OWCP.

Title of Collection: Notice of Law Enforcement Officer's Injury or Occupational Disease and Notice of Law Enforcement Officer's Death.

OMB Control Number: 1240-0022.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Burden Hours: 14.

Total Estimated Annual Other Costs Burden: \$5.

Dated: October 24, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013-25630 Filed 10-29-13; 8:45 am]

BILLING CODE 4510-CH-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Disclosures for Participant Directed Individual Account Plans

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Disclosures for Participant Directed Individual Account Plans," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 et seq.

DATES: Submit comments on or before November 29, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201309-1210-002 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Contact Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: Employee Retirement Income Security Act of 1974 section 404(c), 29 U.S.C. 1104(c), provides that, if an individual account pension plan permits a participant or beneficiary to exercise control over assets in his or her account and the participant or beneficiary in fact exercises such control (as determined under DOL regulations), the participant or beneficiary shall not be deemed to be a fiduciary by such exercise of control and no person otherwise a fiduciary to the plan shall be liable for any loss or breach that results solely from this exercise of control. Regulations 29 CFR 2550.404a-5 provides that, when a plan allocates investment responsibilities to participants or beneficiaries, the plan administrator must take action to ensure they are provided with sufficient information regarding the plan and its investment options, including fee and expense information, to make informed decisions with regard to the management of their individual accounts; therefore, the regulation requires a plan administrator to provide each participant or beneficiary with certain plan-related information and investment-related information.

This disclosure requirement is an information collection subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210-0090.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on October 31, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) years, without any change to existing requirements. The DOL also notes that existing information collection requirements submitted to the OMB receive a month-to-month extension

while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 22, 2013 (78 FR 30333).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210-0090. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-EBSA.

Title of Collection: Disclosures for Participant Directed Individual Account Plans.

OMB Control Number: 1210-0090.

Affected Public: Private sector—businesses or other for-profits.

Total Estimated Number of Respondents: 505,795.

Total Estimated Number of Responses: 674,975,795.

Total Estimated Annual Burden Hours: 7,100,000.

Total Estimated Annual Other Costs Burden: \$257,300,000.

Dated: October 24, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013-25688 Filed 10-29-13; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR**Office of the Secretary**

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, "Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before November 29, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201306-1205-008 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Contact Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks OMB approval for revisions to the

Employers' Attestation to Use Alien Crewmembers for Longshore Activities in U.S. Ports, Form ETA-9033, (currently approved under Control Number 1205-0309) and the *Employers' Attestation to Use Alien Crewmembers for Longshore Activities in the State of Alaska*, Form ETA-9033A (currently approved under Control Number 1205-0352). The information collection is required by Immigration and Nationality Act section 258 (8 U.S.C. 1288) and regulations 20 CFR 655 subpart F. The ETA collects the attestations from shipping companies seeking to use foreign crewmembers for longshore work when no U.S. workers are available.

This ICR has been classified as a revision, because the DOL is merging two Control Numbers, which will simplify the process for both the stakeholder community interested in these collections and the Federal staff reviewing and enforcing the attestations. Control Number 1205-0352 will survive after the merger. The DOL is also proposing changes to the layout of the forms for ease of review and completion. Finally, the DOL proposes to add a few new collection fields that will more accurately capture employer and job-related information. The update of the forms will, for example, reflect current communications methods by requesting email addresses rather than fax numbers.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Numbers 1205-0309 and 1205-0352. The current approval for Control Number 1205-0309 is scheduled to expire on October 31, 2013, and Control Number 1205-0352 expires October 31, 2014. It should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 8, 2013 (78 FR 48463).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205-0309. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-ETA.

Title of Collection: Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports.

OMB Control Numbers: 1205-0309 and 1205-0352.

Affected Public: Private Sector—businesses or other for profits.

Total Estimated Number of Respondents: 7.

Total Estimated Number of Responses: 7.

Total Estimated Annual Burden Hours: 8.

Total Estimated Annual Other Costs Burden: \$0.

Dated: October 24, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013-25686 Filed 10-29-13; 8:45 am]

BILLING CODE 4510-FP-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2009-0045]

Aerial Lifts Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirement contained in the Aerial Lifts Standard in Construction (29 CFR 1926.453). Employers who modify an aerial lift for uses other than those provided by the manufacturer must obtain a certificate from the manufacturer or equivalent entity certifying that the modification is in conformance with applicable American National Standards Institute (ANSI) standards and that this Standard, and the equipment is as safe as it was prior to the modification.

DATES: Comments must be submitted (postmarked, sent, or received) by December 30, 2013.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693-1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA-2009-0045, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA-2009-0045) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without

change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT:

Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3468, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The certification requirement specified in the Aerial Lifts Standard

demonstrates that the manufacturer or an equally-qualified entity has assessed a modified aerial lift and found that it was safe for use by, or near, workers, and that it would provide workers with a level of protection at least equivalent to the protection afforded by the lift prior to modification. OSHA is requesting an adjustment increase in burden hour of 7 hours, resulting from an increase in the number of field modified lifts from 1,025 to 1,953; and an increase in the percentage of construction employers likely to be inspected from 6% to 6.6%.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

Type of Review: Extension of a currently approved collection.

Title: Aerial Lifts Standard in Construction (29 CFR 1926.453).

OMB Control Number: 1218-0216.

Affected Public: Business or other for-profits.

Number of Respondents: 128.

Frequency of Responses: On occasion.

Total Responses: 128.

Average Time per Response: 6 minutes (.10 hour)

Estimated Total Burden Hours: 13.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

- (1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA-2009-0045). You may supplement electronic submissions by uploading document

files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1-2012 (77 FR 3912).

Signed at Washington, DC, on October 25, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013-25712 Filed 10-29-13; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR**Wage and Hour Division****RIN 1235-0018****Extension of the Approval of Information Collection Requirements****AGENCY:** Wage and Hour Division, Department of Labor.**ACTION:** Notice.

SUMMARY: The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., and its attendant regulations, 5 CFR part 1320, require that the Department consider the impact of paperwork and other information collection burdens imposed on the public. Under the PRA, an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See 5 CFR 1320.8(b)(3)(vi). The OMB has assigned control number 1235-0018 to the Fair Labor Standards Act (FLSA) information collections. In accordance with the PRA, the Department solicited comments on the FLSA information collections as they were proposed to be changed by a Notice of Proposed Rulemaking published December 27, 2011 (76 FR 81199-200). 44 U.S.C. 3506(c)(2). The Department also submitted a contemporaneous request for OMB review of the proposed revisions to the FLSA information collections, in accordance with 44 U.S.C. 3507(d). On February 29, 2012, the OMB issued a notice that continued the previous approval of the FLSA information collections under the existing terms of clearance. (See OMB ICR Reference no. 201205-1235-002

http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201205-1235-002). The OMB asked the Department to resubmit the information collection request upon promulgation of a Final Rule, after considering public comments on the December 27, 2011 Notice of Proposed Rulemaking. The Department published Application of the Fair Labor Standards Act to Domestic Service; Final Rule, in the **Federal Register** on October 1, 2013 (78 FR 60454). At the time of publication, the Department stated its intent to publish a notice announcing OMB's decision regarding the information collection (78 FR 60497).

Notice is hereby given that the OMB has approved the extension of the existing information collections under control number 1235-0018. The OMB has also pre-approved changes in the information collections that result from the Application of the Fair Labor Standards Act to Domestic Service; Final Rule; these changes become effective January 1, 2015.

Dated: October 24, 2013.

Mary Ziegler,*Director, Division of Regulations, Legislation, and Interpretation.*

[FR Doc. 2013-25598 Filed 10-29-13; 8:45 am]

BILLING CODE 4510-27-P**LIBRARY OF CONGRESS****Copyright Royalty Board****[Docket No. 2008-2 CRB CD 2000-2003 (Phase II)]****Distribution of the 2000, 2001, 2002 and 2003 Cable Royalty Funds****AGENCY:** Copyright Royalty Board, Library of Congress.**ACTION:** Final distribution order.

SUMMARY: The Copyright Royalty Judges announce the final Phase II distribution of cable royalty funds for the years 2000, 2001, 2002 and 2003 for the Program Suppliers and Devotional programming categories.

DATES: Effective October 30, 2013.

ADDRESSES: The final determination also is posted on the Copyright Royalty Board Web site at <http://www.loc.gov/crb>.

FOR FURTHER INFORMATION CONTACT:

Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor. Telephone: (202) 707-7658; Email: crb@loc.gov.

SUPPLEMENTARY INFORMATION: On February 10, 2011, the Copyright Royalty Judges (Judges) published a notice of initiation of Phase II distribution proceedings relating to cable retransmission royalties for royalty years 2000 through 2003. 76 FR 7590 (Feb. 10, 2011). Participants in the proceeding included the Motion Picture Association of America as representative of program suppliers (MPAA), the Settling Devotional Claimants (SDC),¹ and Worldwide Subsidy Group LLC d/b/a Independent Producers Group (IPG).² IPG-represented claimants include copyright owners whose works fall within either the Program Suppliers category or the Devotional Programming category.³

Based on the considerations and analysis set forth in this Final Determination, the Judges conclude that the distributions at issue in this proceeding shall be:

ALLOCATION IN THE PROGRAM SUPPLIERS CATEGORY

	2000 (percent)	2001 (percent)	2002 (percent)	2003 (percent)
MPAA	98.84	99.69	99.64	99.77
IPG	1.16	0.31	0.36	0.23

¹ Amazing Facts, American Religious Town Hall, Inc., Catholic Communications Corporation, The Christian Broadcasting Network, Inc., Coral Ridge Ministries Media, Inc., Cottonwood Christian Center, Crenshaw Christian Center, Crystal Cathedral Ministries, Inc., Evangelical Lutheran Church in America, Faith For Today, Inc., Family Worship Center Church, Inc. (d/b/a Jimmy Swaggart Ministries), In Touch Ministries, Inc., It Is Written, Liberty Broadcasting Network, Inc., Rhema Bible Church a/k/a Kenneth Hagin Ministries, Joyce Meyer Ministries, Inc. f/k/a Life in the Word, Inc., Oral Roberts Evangelistic Association, Inc., RBC Ministries, Reginald B. Cherry Ministries, Ron Phillips Ministries, Speak the Word Church

International, The Potter's House of Dallas, Inc. d/b/a T.D. Jakes Ministries, and Zola Levitt Ministries comprise the SDC.

² The National Association of Broadcasters as representative of program suppliers (NAB), and Joint Sports Claimants (JSC) also filed Petitions to Participate in Phase II of this proceeding. Issues relating to claims represented by NAB were resolved prior to the Phase II hearing by agreement. See *Joint Notice of Settlement (of the Motion Picture Association of America and NAB)* (Jan. 26, 2012). Based on preliminary motions, the Judges resolved all issues relating to claimants in the Sports Programming category. See *Memorandum Opinion*

and Order, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) (Mar. 21, 2013); *Order on Motion for Joint Sports Claimants for Section 801(c) Ruling, or in the Alternative, A Paper Proceeding in the Phase I Sports Category*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) (May 17, 2013); and *Order on Motion for Distribution*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) (May 23, 2013).

³ IPG initially asserted that certain of its represented copyright owners' works also fell within the Sports category. The Judges subsequently rejected IPG's claim to any of the Phase II Sports category royalties. See *supra*, note 2.

ALLOCATION IN THE DEVOTIONAL CATEGORY

	2000 (percent)	2001 (percent)	2002 (percent)	2003 (percent)
SDC	62.86	60.92	58.98	60.92
IPG	37.14	39.08	41.02	39.08

The following findings of fact and conclusions of law are based upon the evidence introduced at the hearing, the accepted written and live testimony of the witnesses, the direct and rebuttal statements of the parties, the precedential guidance discussed in this Final Determination, and consideration of the economic analyses offered by the parties.

I. Background

Beginning June 3, 2013, the Judges considered testimony of nine witnesses⁴ and concluded with argument of counsel on June 6, 2013. During the course of the proceeding, the Judges reviewed written statements, direct and rebuttal testimony, and ruled on pre-hearing motions regarding discovery and other issues raised by the parties. The parties submitted proposed findings of fact and conclusions of law on June 14.

On July 10, 2013, the Judges issued to the parties their Initial Determination. Pursuant to 17 U.S.C. 803(c)(2) and 37 CFR Part 353, SDC filed a motion for rehearing. After reviewing the motion, the Judges denied the motion for rehearing. *Order Denying Motion for Rehearing*, Docket No. 2008–2 CRB CD 2000–2003 (Phase II) (Aug. 7, 2013). As explained in the August 7, 2013 Order, the Judges determined that none of the grounds set forth in the motion constituted the type of exceptional case—namely, (1) an intervening change in controlling law, (2) the availability of new evidence, or (3) a need to correct a clear error or prevent manifest injustice—warranting a rehearing. *Id.*

A. Statutory and Regulatory Premises

Section 111 of the Copyright Act (Act) creates a statutory license that permits cable system operators (CSOs) to retransmit copyrighted works included in broadcast television signals without obtaining the authorization of the owners of those works. When a CSO retransmits non-exempt broadcast

programming outside the program's original, local broadcast area the CSO must deposit royalties based on their gross receipts with the Copyright Office semiannually. 17 U.S.C. 111(d)(1). In July of each year, copyright owners, whose works the CSOs retransmit, file claims to the royalties deposited for the previous calendar year. 17 U.S.C. 111(d)(4)(A). Claimants may file individual claims or joint claims directly, or through an authorized agent.

The Judges are charged with allocation and distribution of the statutory license royalties deposited with the Copyright Office. 17 U.S.C. 111(d)(4). By statute and regulation, the Judges must render a decision and issue a determination regarding distribution of the collected funds within 11 months of conclusion of a statutorily mandated settlement conference. 17 U.S.C. 803(c)(1); 37 CFR 352.2. The settlement conference in this proceeding took place on August 10, 2012. *See Order Adopting Protective Order and Amending Discovery Schedule*, Docket No. 2008–2 CRB CD 2000–2003 (Phase II), at 3 (July 10, 2012).

Historically, individual and joint claimants have utilized a common representative to pursue on their behalf collection and distribution of the deposited royalties. Each representative pursues claims within a program category. Distribution proceedings, by convention, have progressed in two phases. In Phase I of the proceeding, claimants contest the allocation of royalties among the program categories.⁵

⁵ In Phase I of the current proceeding, the claimants organized themselves into the following claimant categories: devotional programs, sports programs, Canadian programs, commercial programs, noncommercial television programs, noncommercial radio broadcast programs, music on all broadcast programs, and program suppliers. *See Distribution of the 2000–2003 Cable Royalty Funds, Distribution order*, in *Docket No. 2008–2 CRB CD 2000–2003*, 75 FR 26798 (May 12, 2010). IPG challenged the category definitions; the Judges rejected IPG's challenge, finding that IPG was "collaterally estopped from contesting the definitions established by the final Phase I determination" since IPG did not file a Petition to Participate in Phase I of the proceeding. *See Order on Motion by Joint Sports Claimants for Section 801(c) Ruling, or in the Alternative, a Paper Proceeding in the Phase I Sports Category*, Docket No. 2008–2 CRB CD 2000–2003 (Phase II), at 2 (May 17, 2013). The claims categories adopted by the

If representatives of the categories agree, the Judges may authorize distribution to the categories in the agreed percentages. If the representatives do not agree, the Judges initiate what has come to be known as a Phase I distribution proceeding. The Judges may authorize partial distributions pending resolution of the controversies, provided that sufficient funds remain to cover the amounts in controversy. *See* 17 U.S.C. 801(b)(3).

The allocation of funds among individual claimants within a particular category occurs in what has been termed Phase II of the distribution proceeding. Similar to Phase I, if the claimants agree, the representatives may distribute funds in accordance with the content of the claims and any representation agreement they may have with the claimants. If the validity or amount of a claim, or the claimant's proportional share of the funds within a category, is in controversy, the Judges commence a Phase II proceeding to resolve the controversies.

B. Guiding Precedent

Section 111(d)(4) of the Act provides that, in the event of a controversy concerning the distribution of royalties, "the Copyright Royalty Judges shall, pursuant to Chapter 8 of [title 17], conduct a proceeding to determine the distribution of royalty fees." Unlike sections of the Act that apply to the determination of *rates*, Section 111(d)(4), which deals with *distributions*, does not set forth an economic standard that the Judges shall apply in order to determine how to distribute the royalties.

As the Librarian of Congress (Librarian)⁶ has stated:

Section 111 does not prescribe the standards or guidelines for distributing

Phase I parties were developed over a number of years through a series of settlements by participants in successive royalty distribution proceedings.

⁶ The Librarian was responsible for administering the Copyright Arbitration Royalty Panel (CARP) process for distributing cable royalties from 1993, when the Copyright Royalty Tribunal (CRT), a predecessor adjudicative body, was abolished, until 2005, when the Copyright Royalty Judges program was established. The Librarian had the obligation of reviewing CARP decisions and, on recommendation of the Register of Copyrights, adopting, modifying or rejecting them.

⁴ Although Mr. Alan Whitt began his testimony, the Judges ultimately did not admit it into evidence. *See* 6/6/13 Tr. at 1358–62. By stipulation of the parties, the Judges accepted the written testimony of Mr. Michael Little (but not all exhibits). *See Stipulation Regarding Testimony of Michael D. Little* (May 31, 2013).

royalties collected from cable operators under the statutory license. Instead, Congress decided to let the Copyright Royalty Tribunal “consider all pertinent data and considerations presented by the claimants” in determining how to divide the royalties.

Distribution of 1993, 1994, 1995, 1996 and 1997 Cable Royalty Funds, Order, in Docket No. 2000–2 CARP CD 93–97, 66 FR 66433, 66444 (Dec. 26, 2001) (quoting H.R. Rep. No. 1476, at 97 (1976)) (1993–1997 Librarian Order).⁷

There is not, however, a wholesale absence of statutory guidance. Section 111 directs the Judges to act pursuant to Chapter 8 of the Act. The Judges are guided by the general directives contained in Chapter 8. In particular, Section 801 of the Act provides, in pertinent part: “The Copyright Royalty Judges shall act * * * on the basis of * * * prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, copyright arbitration royalty panels * * * and the Copyright Royalty Judges, * * * and decisions of the court of appeals under this chapter.” 17 U.S.C. 803(a)(1).

Accordingly, the Judges have reviewed the 12 prior determinations of Phase II proceedings under Section 111 of the Act—ten by the CRT,⁸ and two by

the Librarian under the CARP system⁹—as well as the relevant Federal court cases. The Judges have identified several basic principles from these earlier proceedings that have particular relevance to the present proceeding.

Relative marketplace value is the preeminent consideration for allocating shares of royalties to programs or groups of programs. *Program Suppliers v. Librarian of Congress*, 409 F.3d 395, 401 (D.C. Cir. 2005); *1993–1997 Librarian Order*, 66 FR at 66445. Although early CRT decisions considered other factors, such as the degree of harm to copyright owners by virtue of the statutory license, the benefits derived by the CSO, program quality and program length, *1986 Determination*, 54 FR at 16153, these factors have been deemphasized in later decisions of the CRT, the CARPs and the Librarian.

In order to assess relative marketplace value the Judges must look to hypothetical, simulated, or analogous markets, since there is no free market for cable retransmission of broadcast television programs. *See, e.g., 1993–1997 Librarian Order*, 66 FR at 66445; *1987 Music Determination*, 55 FR at 11993. While there is no single formula or source for allocating royalties, *see, e.g., 1993–1997 Librarian Order*, 66 FR at 66447, actual measured viewing is significant to determining relative marketplace value, *id.*, and viewing data compiled by The Nielsen Company (Nielsen) are a useful starting point for determining actual viewership. *See, e.g., 1986 Determination*, 54 FR at 16153. Nevertheless, viewing measurements are not perfect and the Judges must be prepared to make appropriate adjustments when claimants are able to demonstrate that their programs have not been measured or are significantly undermeasured. *See, e.g., 1987 Devotional Determination*, 55 FR at 5650; *1986 Determination*, 54 FR at 16153–54.

In making distributions under Section 111, mathematical precision is not required. Rather, the Judges’ rulings must lie with a “zone of reasonableness.” *See National Ass’n of Broadcasters v. Librarian of Congress*, 146 F.3d 907, 929 (D.C. Cir. 1998); *see also Asociacion de Compositores y Editores de Musica Latino Americana v. Copyright Royalty Tribunal*, 854 F.2d 10, 12 (2d Cir. 1988) (recognizing “zone of reasonableness” standard in Phase II proceedings); *Christian Broadcasting Network, Inc. v. Copyright Royalty*

Tribunal, 720 F.2d 1295, 1304 (D.C. Cir. 1983) (same).

With the foregoing principles clearly in mind, the Judges apply the appropriate economic analysis to the evidence adduced at the hearing.

II. Statement of the Case

A. Phase I Proceeding

In the Phase I proceeding for the present case the parties limited by stipulation the issues to be considered by the Judges. *Distribution of the 2000–2003 Cable Royalty Funds, Distribution Order*, Docket No. 2008–2 CRB CD 2000–2003, 75 FR 26798, 26799 (May 12, 2010) (Phase I Order). Specifically, the parties stipulated that the Judges would determine the Phase I share of the Canadian Claimants only, with the remaining balance to be awarded to the Settling Parties.¹⁰ *Id.* The stipulation made clear that the parties were not seeking the individual Phase I shares of the claimant groups comprising the Settling Parties. *Id.* Consequently, on May 12, 2010, the Judges announced the final Phase I shares of the Canadian Claimants to the cable royalties for the years at issue in this Phase II proceeding and awarded the remaining balance of the 2000–2003 cable royalties to the Settling Parties. *Id.* at 26807. To date the Judges have authorized partial distributions ranging from \$121.7 million in 2000 to nearly \$131 million in 2003. On February 3, 2011, the Judges ordered final distribution of all cable royalties for 2000, 2001, 2002, and 2003 that were no longer in dispute. *Order Granting Phase I Claimants’ Motion for Further Distribution of 2000, 2001, 2002, and 2003 Cable Royalty Funds*, Docket No. 2008–2 CRB CD 2000–2003 (Feb. 3, 2011). On January 17, 2012, the Judges denied IPG’s motion for a partial distribution of \$3 million of the remaining royalties for 2000–2003, noting that IPG is “not an established claimant to cable royalties” and “[the Judges] simply do not know at this stage of the proceeding if IPG is entitled to a royalty distribution, let alone the amount.” *Order Denying Independent Producers Group’s Motion for Partial Distribution*, Docket No. 2008–2 CRB CD 2000–2003 (Phase II) (Jan. 17, 2012).

B. Commencement of Phase II

On February 10, 2011, on request of program suppliers represented by MPAA, SDC, and JSC, the Judges

⁷ The 1993–1997 Librarian Order was vacated as moot after the parties settled their appeals. *Distribution of 1993, 1994, 1995, 1996 and 1997 Cable Royalty Funds, Notice of termination of proceeding*, Docket No. 2000–01 CARP CD 93–97, 69 FR 23821 (Apr. 30, 2004). The settlement and vacatur of the 1993–1997 Librarian Order did not disturb the reasoning articulated therein. *Id.* at 23822.

⁸ *1979 Cable Royalty Distribution Determination, Notice of final determination*, in Docket No. CRT 80–4, 47 FR 9879 (Mar. 8, 1982) (1979 Determination); *1980 Cable Royalty Distribution Determination, Notice of final determination*, in Docket No. CRT 81–1, 48 FR 9552 (Mar. 7, 1983) (1980 Determination); *1981 Cable Royalty Distribution Determination, Notice of final determination*, in Docket No. CRT 82–1, 49 FR 7845 (Mar. 2, 1984) (1981 Determination); *1982 Cable Royalty Distribution Determination, Notice of final determination*, in Docket No. CRT 83–1, 49 FR 37653 (Sept. 25, 1984) (1982 Determination); *1983 Cable Royalty Distribution Proceeding, Notice of final determination*, in Docket No. CRT 84–1 83CD, 51 FR 12792 (Apr. 15, 1986) (1983 Determination); *1984 Cable Royalty Distribution Proceeding, Notice of final determination* in Docket No. CRT 85–4–84CD, 52 FR 8408 (Mar. 17, 1987) (1984 Determination); *1985 Cable Royalty Distribution Proceeding, Notice of final determination*, in Docket No. CRT 87–2–85CD, 53 FR 7132 (Mar. 4, 1988) (1985 Determination); *1986 Cable Royalty Distribution Proceeding, Notice of final determination*, in Docket No. CRT 88–2–86CD, 54 FR 16148 (Apr. 21, 1989) (1986 Determination); *1987 Cable Royalty Distribution Proceeding, Notice of final determination of Devotional Claimants controversy*, in Docket No. CRT 89–2–87CD, 55 FR 5647 (Feb. 16, 1990) (1987 Devotional Determination); *1987 Cable Royalty Distribution Proceeding, Notice of final determination of music controversy*, in Docket No. 89–2–87CD, 55 FR 11988 (Mar. 30, 1990) (1987 Music Determination).

⁹ *Determination of the Distribution of the 1991 Cable Royalties in the Music Category*, Docket No. 94–3 CARP CD 90–92, 63 FR 20428 (Apr. 24, 1998) (1990–1992 Determination); *1993–1997 Librarian Order*, 66 FR 66433.

¹⁰ Devotional Claimants, JSC, National Association of Broadcasters for U.S. Commercial Television Broadcaster Claimants, Music Claimants, MPAA, and Public Television Claimants comprised the “Settling Parties.”

announced initiation of a Phase II proceeding and requested Petitions to Participate. See 76 FR 7590 (Feb. 10, 2011). In response to the notice, the Judges received petitions from: the MPAA; SDC; JSC; NAB; Devotional Claimants; HSN, LP, AST LLC, Home Shopping En Espangol [*sic*] GP, USA Broadcasting Productions, USA Broadcasting Stations, Studios USA, and InterActive Corp., jointly (Joint Petitioners); and IPG.¹¹ By May 2012, the only remaining Phase II controversies were those asserted by IPG in the Devotional, Sports and Program Suppliers categories.

C. Preliminary Hearing

In August 2012, the remaining participants filed motions or objections relating to the claims asserted by other participants. The participants made far-ranging objections and submitted papers and arguments to support their objections in a form that the Judges could not accept as evidence. As a result, the Judges denied all the motions and objections without prejudice and set the matter for an evidentiary hearing on claims objections. The Judges commenced the evidentiary hearing on November 13, 2012, with a continuance after two days of testimony to December 5, 2012, to complete the participants' presentations of evidence and argument.

On March 21, 2013, the Judges entered an order resolving most of the claims challenges. *Memorandum Opinion and Order*, Docket No. 2008–2 CRB CD 2000–2003 (Phase II) (March 21, 2013) (March 21 Order).¹²

Subsequent to the Preliminary Hearing, the Judges determined that IPG had no remaining valid claims to royalties in the Sports Programming category. *Order on Motion by Joint Sports Claimants for Section 801(c) Ruling or, in the Alternative, a Paper Proceeding in the Phase I Sports Category*, Docket No. 2008–2 CRB CD 2000–2003 (Phase II) (May 17, 2013). As a result, the only remaining Phase I categories in dispute were the Program

Suppliers category and the Devotional category. The Judges' role in this matter, therefore, is to determine the relative percentage allocations of royalties for 2000, 2001, 2002, and 2003 between MPAA-represented claimants and IPG-represented claimants in the Program Suppliers category and between SDC-represented claimants and IPG-represented claimants in the Devotional category.

III. Preliminary Rulings¹³

A. Admissibility of Exhibit

The SDC, with agreement of IPG, offered into evidence Exhibit 177, the Written Direct Testimony of Mr. Michael. D. Little, President and Chief Operating Officer of The Christian Broadcasting Network, Inc. At the hearing, IPG objected to the admissibility of Exhibit 3 to Mr. Little's testimony, which consists of approximately 600 pages of printouts of Internet Web sites. IPG objected that (1) the veracity of this document, derived from the Internet, is questionable, (2) Mr. Little, by his own admission, obtained the printouts from an undisclosed third party, raising further questions as to the veracity and authenticity of the Exhibit, and (3) the documents themselves are "just a bunch of random stuff without any analysis attached to it." 6/6/13 Tr. at 1341–42. The Judges admitted Exhibit 177 and took under advisement admission of the attendant Exhibit 3. *Id.* at 1344.

IPG's objections are well-taken.¹⁴ The SDC did not lay an adequate foundation for Exhibit 3. Even if SDC had done so, the exhibit is, from a practical standpoint, unusable. While some of the more than 600 pages contain program information, a great many do not. In the format that this document was delivered

to the Judges it is not searchable, and, in many cases is nearly illegible. The SDC did not provide a summary or analysis of the specific relevant facts to be gleaned from this stack of paper. By offering evidence in this form, the SDC places an unreasonable burden on the Judges and the other parties. The Judges reject Exhibit 3 to Exhibit 177. The remainder of Exhibit 177 is thus admitted by stipulation, with that redaction.

B. Challenges to Claims Subsequent to the Preliminary Hearing

To distribute royalties to a copyright owner under Section 111 of the Copyright Act, the Judges must first determine whether the copyright owner is eligible to receive such royalties. *Universal City Studios LLLP v. Peters*, 402 F.3d 1238, 1244 (D.C. Cir. 2005); see *Order Denying Motions to Strike Claims*, Docket No. 2008–2 CRB CD 2000–2003 (Phase II) at 2 (Sept. 14, 2012). Under the law and regulations in effect through July 31, 2004, in order to be eligible to receive Section 111 royalties, a copyright owner (or its duly authorized representative) was required to file a claim for royalties with the Copyright Office during the month of July in the year following the year for which the copyright owner seeks such royalties. 17 U.S.C. 111(d)(4)(A) (amended 2004); 37 CFR 252.2 (repealed 2005). Similarly, the copyright owner or its duly authorized agent must file a Petition to Participate in any cable royalty distribution proceedings within thirty days after the publication in the **Federal Register** of a notice of commencement of a proceeding. 37 CFR 351.1(b)(3).

The Preliminary Hearing in this proceeding led to a resolution of almost all claims challenges asserted by the parties up to that point.¹⁵ After the Preliminary Hearing, some claimants contacted the Judges asserting an alliance to one representative or the other. By Order issued on May 20, 2013 (Order to Show Cause), the Judges directed the parties to show cause why several of the affected claims should not be dismissed in light of the copyright owners' statements, since it appeared that either no authorized entity had filed a claim, or, a timely claim having been filed, no authorized entity had included the claimant as part of its Petition to Participate in this proceeding. The Judges received additional evidence from the parties at the beginning of the Determination hearing in order to resolve remaining representation issues and ruled on the

¹¹ Subsequently, MPAA settled its Phase II controversies with NAB and the Joint Petitioners, see *Joint Notices of Settlement* (January 26, 2012), and later with SDC, see *Joint Notice of Settlement* (May 26, 2012).

¹² The March 21 Order resolved all outstanding challenges to the validity of claims, except the Judges ordered IPG to obtain written clarification of representation from the Billy Graham Evangelistic Association and sought further briefing relating to "Claim 308 from 2000," involving RBC Ministries in the Devotional category. The Judges validated Claim 308 from 2000 by order dated April 10, 2013. The Billy Graham organization acknowledged IPG's representative authority for 2002 and 2003, thereby resolving that controversy in favor of IPG for those royalty years. See Letter from Justin T. Arnot to Copyright Royalty Board (Apr. 19, 2013).

¹³ During the course of the proceeding, in correspondence (particularly email correspondence); pleadings; written testimony; live testimony; and argument of counsel, certain of the parties raised questions and implied, if not spoken, requests for action by the Judges. Except to address the MPAA representation issue raised by IPG, see section III.B.1.a and note 18, *infra*, the Judges decline to take action on issues, substantive or procedural, when those issues are presented informally. The Judges, in this instance, afforded IPG the benefit of the doubt inasmuch as IPG included the issue in a responsive pleading, albeit without a specific affirmative request. Affirmative action by the Judges without a request for action is unwarranted and could be contrary to principles of due process. The Judges considered other informal requests of IPG and the other participants and rejected them on both procedural and substantive grounds.

¹⁴ These objections, which were properly interposed by IPG's counsel, stand in contrast with the views that Mr. Galaz offered on the admissibility in his written rebuttal testimony. The views of a witness on the admissibility of evidence are improper and the Judges do not consider them.

¹⁵ See *supra* note 12.

claims from the bench. 6/3/13 Tr. at 53–58.¹⁶

1. Program Suppliers Claims

a. MPAA's Representation of Joint Claimants

In his written rebuttal testimony, Mr. Raul Galaz of IPG asserts, for the first time in this proceeding, that 615 claims represented by MPAA and identified in Exhibit R–15 to his testimony should be dismissed because MPAA has failed to produce adequate documentation of its authority to represent the ultimate claimants, *i.e.*, the copyright owners. Galaz WRT at 35–38 and Ex. R–15.

Each of the 615 claimants is claimed indirectly by MPAA. MPAA represents a number of entities that have filed joint claims on behalf of other copyright owners. MPAA has no contractual privity with those copyright owners. Its representation of them is by virtue of its representation agreements with joint claimants who filed on their behalf. This, in itself, is no impediment to MPAA's representation.

The Judges conclude that IPG's challenge to MPAA's representation of these 615 claimants is not properly before the Judges.¹⁷ IPG's counsel made no motion to strike these claims at any time during these proceedings. Moreover, IPG was in a position to raise these challenges during the preliminary hearing and failed to do so in other than an incidental way.¹⁸

Even assuming that IPG's challenges were properly before the Judges, the Judges would have rejected them. The sole ground that IPG asserts for invalidating the claims on Exhibit R–15 is that MPAA has not produced contracts between third parties—*i.e.*, the MPAA-represented program suppliers and the individual claimants that the MPAA-represented program suppliers represent in turn. From this lack of documentation IPG concludes, and asks the Judges to conclude, that MPAA has failed to establish that it is a duly authorized representative of those individual claimants.

Neither the Act, nor any of the regulations adopted under it, address what evidence is needed to establish one's authority to represent claimants in

the filing of claims or in distribution proceedings before the Judges. Nevertheless, the Judges have stated that “the parties must manifest in some unambiguous manner that they intended for a principal/agent relationship to exist between them.” March 21 Order, at 12. Ultimately the question of authority is a question of fact requiring a weighing of the evidence.

In this proceeding MPAA has produced fully-executed Representation Agreements with each of the MPAA-represented program suppliers. Ex. 500.¹⁹ Each Representation Agreement includes a provision stating that if the “Claimant” (MPAA's counterparty) has filed a joint claim, MPAA is authorized to represent all joint claimants to that joint claim. *See, e.g.*, Ex. 500 at Bates no. MPAA–RP–05219, ¶ 16. Each Representation Agreement also includes a provision stating that the Claimant is the duly authorized representative of all joint claims submitted by the Claimant, and that the Claimant is authorized by all joint claimants to execute the Representation Agreement on their behalf. *See, e.g., id.* at Bates no. MPAA–RP–05219, ¶ 17. *See also*, 6/3/13 Tr. at 146–150 (Kessler). By their terms, the Representation Agreements are perpetual—*i.e.*, they remain effective until terminated by one of the parties. Ex. 500 at Bates no. MPAA–RP–05219, ¶ 18; 6/3/13 Tr. at 157 (Kessler).

The Judges find this evidence sufficient to establish that MPAA is duly authorized to represent the joint claimants covered by these Representation Agreements. Further evidence of representation, such as the contracts between the MPAA-represented program suppliers and the underlying claimants, is unnecessary in the absence of any evidence calling into question the authority of MPAA or the joint claimants that it represents—*e.g.*, a disavowal of representation by an underlying claimant or evidence that the claimant is represented by another party. IPG has offered no such evidence with respect to the 615 claims that it seeks to challenge. Therefore, the challenge, even if IPG had raised it properly, would have been rejected.

b. Overlapping Claims

Both IPG and MPAA have identified different sets of overlapping claims—*i.e.*, claimants that both parties claim to represent. Galaz WRT at 32 n.32 and Ex. R–11; Kessler WRT at 5.

In some instances, claimants assert that they terminated their relationship with IPG either during the years covered by this proceeding or thereafter.²⁰ These claimants stated that they do not want IPG to continue to represent their interests. In other instances, there are simply conflicting claims of representation, with no further communication from the claimants.²¹

As to both groups, IPG asserts that the terms of their agreements specify a termination procedure that requires at least six months' notice and authorizes and obligates IPG to continue pursuit of royalties payable through the termination date. As to the first group of claims, MPAA asserts that the Judges should honor the claimants' wishes to be represented by MPAA rather than IPG. MPAA has not addressed the second group directly.

IPG has invited the Judges to engage in an interpretation of the representation agreements that it has entered into with these claimants to determine whether a claimant's purported termination satisfies the requirements of the contract. This sort of contractual interpretation is beyond the Judges' authority. *See Nat'l Broad. Co. v. Copyright Royalty Tribunal*, 848 F.2d 1289, 1296 (D.C. Cir. 1988) (Tribunal's obligation is to set forth the rule of distribution, not resolve substantive rights of the parties). Where a claimant has unambiguously manifested that it no longer wants a particular entity to represent its interests in these proceedings, the Judges will honor that request. To the extent that the claimant's action may affect the rights and obligations under a contract between the claimant and the entity that purports to represent it, those issues must be resolved by a court of competent jurisdiction. *See Id.*

Applying this rule, the Judges resolve the representation of the overlapping claims as follows.

¹⁶ See Appendix A.

¹⁷ Unlike the claims the Judges addressed in their Order to Show Cause, the Judges received no new information following the preliminary hearing that would cast doubt on the validity of the MPAA claims that IPG challenges.

¹⁸ Rather than lodging a formal pleading, IPG embedded its dissatisfaction with certain MPAA claims. Mention of a concern defensively rather than in the form of a motion or cross-motion does not present the issue for full consideration by the Judges.

¹⁹ Exhibit 500 is a restricted exhibit. *See* 6/3/13 Tr. at 141. Consequently, access to this exhibit is limited to only the parties who have executed Non-Disclosure Certificates in accordance with the Protective Order entered in this proceeding.

²⁰ The following claims fall in this category: DreamWorks LLC, Litton Syndications, Inc., Marty Stouffer Productions, Ltd., Martha Stewart Living Omnimedia, Reel Funds International, Remodeling Today d/b/a Today's Homeowner, The Television Syndication Company, United States Olympic Committee, and Urban Latino TV LLC. In addition,

Fintage, as a representative for Venevision International, has asserted that MPAA should represent Venevision in these proceedings. In the Show Cause hearing several of these claims were dismissed for certain years. *See supra* note 16.

²¹ The claims falling in this category are: Carol Reynolds Productions, Inc., Cinemavault Releasing, Eagle Rock Entertainment, Fitness Quest, Inc., Integrity Global Marketing, Inc., Pacific Family Entertainment and Ward Productions.

Disposition of Overlapping Claims where Claimants Terminated Authority

Claimant	Claim Year				Rationale
	2000	2001	2002	2003	
Dreamworks LLC	X	MPAA	MPAA	MPAA	Claimant terminated IPG's authority.
Litton Syndications	X	MPAA	MPAA	MPAA	Claimant terminated IPG's authority.
Martha Stewart Living Omnimedia	IPG	MPAA	MPAA	MPAA	MPAA concedes that IPG has a representation agreement with claimant for 2000 (although the agreement is not part of the record) and did not include claimant in its petition for that year (MPAA included claimant in its petition for 2001-2003). Claimant entered into a Representation Agreement with MPAA dated 5/9/03.
Marty Stouffer Productions	X	MPAA	MPAA	MPAA	Claimant terminated IPG's authority.
Reel Funds International	IPG	IPG	IPG	IPG	Claimant confirmed IPG's authority.
Remodeling Today, Inc. dba Today's Homeowner	MPAA	MPAA	X	MPAA	Claimant terminated IPG's authority.
The Television Syndication Company	MPAA	MPAA	MPAA	X	Claimant terminated IPG's authority.
Urban Latino TV	Dismissed	X	MPAA	MPAA	Claimant terminated IPG's authority. No claim filed for 2000.
U.S. Olympic Committee	Dismissed	Dismissed	MPAA	Dismissed	Claimant terminated IPG's authority. MPAA included claimant in its petition for 2002 only.
Venevision International	Dismissed	IPG	IPG	IPG	2000: No claim filed. 2001-2003: Fintage's notification regarding termination of IPG representation is unreliable given the subsequent communications from BBC Worldwide Americas and Reel Funds International, and the Judges do not rely on it.

X'ed out boxes denote claims that were already addressed in the Show Cause hearing.

As to the overlapping claims where there has been no instruction from the claimant concerning representation, the Judges will take the later-in-time agreement between a claimant (or its

representative) and a party as the most persuasive evidence concerning representation. Admitted written agreements are deemed more persuasive

than oral testimony about the existence of an agreement.

Applying this rule, the Judges resolve the representation of the overlapping claims as follows.

DISPOSITION OF OVERLAPPING CLAIMS—NO COMMUNICATION FROM CLAIMANT

Claimant	Claim year				Rationale
	2000	2001	2002	2003	
Carol Reynolds Productions Inc.	MPAA	MPAA	MPAA	MPAA	2000–2001: Claimant covered by MPAA Representation Agreement with CBC dated 9/25/02; no record evidence of IPG agreement with claimant; IPG concedes MPAA agreement is later in time.
Cinemavault Releasing ...	MPAA	MPAA	MPAA	MPAA	
Eagle Rock Entertainment.	MPAA	MPAA	MPAA	MPAA	Claimant covered by MPAA Representation Agreement with AFMA dated 9/24/02; no record evidence of IPG agreement with claimant; IPG concedes MPAA agreement is later in time.
Fitness Quest Inc	MPAA	MPAA	MPAA	MPAA	Claimant covered by MPAA Representation Agreement with Audio-Visual Copyright Society dated 9/25/02; no record evidence of IPG agreement with claimant; IPG concedes MPAA agreement is later in time.
Integrity Global Marketing Inc.	MPAA	MPAA	MPAA	MPAA	Claimant covered by MPAA Representation Agreement with The Goodman Group dated 7/8/04; no record evidence of IPG agreement with claimant; IPG concedes MPAA agreement is later in time.
Pacific Family Entertainment.	Dismissed	MPAA	MPAA	MPAA	Claimant covered by MPAA Representation Agreement with ComPact Collections dated 7/8/02; no record evidence of IPG agreement with claimant; IPG concedes MPAA agreement is later in time.
Ward Productions	MPAA	MPAA	MPAA	MPAA	Claimant covered by MPAA Representation Agreement with ComPact Collections dated 7/8/02; no record evidence of IPG agreement with claimant; IPG concedes MPAA agreement is later in time. Claimant not covered by MPAA petition for 2000. Claimant entered into Representation Agreement with MPAA dated 9/27/02; no record evidence of IPG agreement with claimant; IPG concedes MPAA agreement is later in time.

c. Claim(s) for BBC Worldwide Americas, Inc.

An additional claimant—BBC—falls into its own category. Both MPAA and IPG have included BBC Worldwide (BBC-W) in their respective Petitions to Participate. Fintage Publishing and Collections BV (Fintage) advised the Judges that it had the exclusive right to administer and collect royalties on behalf of its client, EGEDA, and EGEDA, in turn, had such rights with respect to BBC-W. *Notice Regarding Representation of BBC Worldwide, Venevision International, and Reel Funds International*, Docket No. 2008–2 CRB CD 2000–2003 (Phase II) (May 9, 2013). Fintage advised the Judges that it wished to have MPAA represent this claimant's interests in the proceedings. *Id.* at 1, 3. Subsequently, the General Counsel of BBC Worldwide Americas, Inc. (BBC-WA) advised the Judges that

it is represented by IPG. *Notice Regarding Representation of BBC Worldwide Americas*, Docket No. 2008–2 CRB 2000–2003 (Phase II) (May 21, 2013) (BBC Notice).

IPG filed claims on behalf of BBC-W for 2000, and on behalf of BBC-WA for 2001–2003. Fintage filed a claim on behalf of BBC-W for 2002. BBC-WA filed its own claims for 2000 and 2001. No claims were filed on behalf of BBC-W for 2001 or 2003.

This appears to be a case of mistaken identity on IPG's part. BBC-WA's General Counsel has clarified that BBC-W (or, to be precise, BBC Worldwide Limited) is a separate entity from BBC-WA. *BBC Notice*, at 2. IPG's relationship is with BBC-WA, not BBC-W. Fintage's relationship is with BBC-W (through EGEDA), not with BBC-WA. These are separate claimants with separate claims. There is no overlap.

IPG, however, mistakenly identified its client as BBC-W, rather than BBC-WA, in its Petition to Participate. Any claimant in a distribution proceeding must file a Petition to Participate. 37 CFR 351.1 (a). Section 354.1(b)(2) requires parties to a proceeding to file a Petition to Participate within 30 days of commencement of the proceeding, providing detail concerning the participant or claimants the participant is representing in a joint petition. The Judges may accept late petitions up to a date that is no less than 90 days before the date set for filing written direct statements. 37 CFR 351.1(d). That date is long past. It is now too late to rectify IPG's error by adding a new claimant to these proceedings. BBC-WA is not a represented claimant in this proceeding, and IPG's mistaken claim for BBC-W is dismissed.²²

²² The Judges note that this ruling is contrary to the ruling from the bench regarding BBC-WA that was made during the Show Cause hearing. *See* 6/3/13 Tr. at 57. Upon further reflection and examination of the record the Judges conclude that their earlier determination was incorrect.

As to MPAA's representation of BBC-W, the only year for which both predicates for representation in this proceeding—filing of a valid claim and

inclusion in a Petition to Participate—have been met is 2002. No claims were filed for BBC-W in 2001 and 2003. The only year in which MPAA included

BBC-W in its petition is 2002 (through its inclusion of Fintage which, in turn, listed BBC-W in its joint claim). In summary:

DISPOSITION OF CLAIMS INVOLVING BBC ENTITIES

Claimant	Claim year			
	2000	2001	2002	2003
BBC Worldwide	Dismissed	Dismissed	MPAA	Dismissed.
BBC Worldwide Americas	Dismissed	Dismissed	Dismissed	Dismissed.

Nearly all of the disputed claims are thus resolved in MPAA's favor (apart from Reel Funds and Venevision, which have an insignificant effect on the relative shares²³). The Judges conclude that the dismissal of BBC-W (one MPAA-represented claimant out of approximately 1400) for three claim years does not have a material effect on the relative shares.²⁴ Similarly, the dismissal of two of IPG's claimants (BBC-WA for all claim years and Venevision for 2000) out of more than 150 does not have a material effect on the relative shares. As for the allocation of the disputed claims to MPAA, MPAA's expert witness on economics and econometrics, Dr. Jeffrey Gray, credited all of them to MPAA in his computation of relative shares, 6/4/12 Tr. at 513 (Gray), so there is no need to make any adjustment to reflect that resolution. In sum, the Judges conclude that no adjustment to the relative royalty shares of IPG and MPAA is needed as a result of the foregoing determination of claims.

2. Devotional Programming Claims

IPG challenged 42 of the SDC's claims²⁵ for the first time in Mr. Galaz's rebuttal testimony. As with IPG's challenge to 615 of MPAA's claims, these challenges are not properly before the Judges. IPG's counsel made no motion to strike these claims at any time during this proceeding, and IPG was in a position to raise these challenges during the Preliminary Hearing (when IPG challenged eighteen of the SDC's claims) and failed to do so.

Moreover, IPG does not (and cannot) allege that the SDC's claims are for programs that were not retransmitted on

a distant basis during the claim years they challenge. 6/5/13 Tr. at 905 (Galaz). Rather, IPG argues that the claims should be dismissed because the specific example of a broadcast the Devotional claimants cited in their claims did not take place as described on the claim form. The Judges rejected that argument as a basis for challenging the validity of claims in the March 21 Order, and would do so now as well if IPG's challenge were timely.

IV. Analysis

A. Economic Issues

1. Relative Market Value Standard

Despite the absence of a defined statutory standard, as noted above the Judges do not write on a clean slate. More particularly, prior Phase II determinations in cable retransmission proceedings have referred to a "relative market value" standard, although "relative market value" has not been defined explicitly. In order to make explicit the Judges' application of the relative market value standard in the present Determination, the Judges begin by expressly defining relative market value.

2. Definition of "Relative Market Value"

At the outset, it is necessary to appreciate the reason for the statutory license and the concomitant distribution proceedings. Statutory licenses substitute for free market negotiations because of a perceived intractable "market failure" inherent in the licensing of copyrights—particularly the assumed prohibitively high "transaction costs" of negotiating a multitude of bilateral contracts between potential sellers and buyers.²⁶ See, e.g., R. Picker, *Copyright as Entry Policy: The Case of Digital Distribution*, 47 Antitrust Bull. 423, 464 (2002) ("The modern structure of * * * validating or conferring rights

in copyright holders yet coupling those rights with statutory licenses has the virtue of mitigating the exercise of monopoly power and minimizing the transaction costs of negotiations."); S. Willard, *A New Method of Calculating Copyright Liability for Cable Rebroadcasting of Distant Television Signals*, 94 Yale L.J. 1512, 1519 (1985) ("One important reason for compulsory licensing * * * was to avoid the 'prohibitive' transaction costs of negotiating rebroadcast consent."); S. Beser, W. Manning & B. Mitchell, *Copyright Liability for Cable Television: Compulsory Licensing and the Coase Theorem*, 21 J.L. & Econ. 67, 87 (1978) ("Compulsory licensing * * * has lower negotiating costs than a system based on full copyright liability * * *"). The statutory license avoids this feared breakdown in the contracting process by allowing copyright use to be undertaken *ex ante* payment—thereby permitting consumers to obtain the enjoyment ("utility," in economic terminology) of viewing the copyrighted work—with the price to be paid to the individual copyright owner *ex post* viewing.

The Judges begin parsing the phrase "relative market value" by considering the word "relative." The fact that the Phase II categories are finite (the allocation among categories having been finalized in Phase I), indicates that the word "relative" is intended to denote that the value of any retransmitted program is to be determined in relation to the value of all other programs in the respective Phase I categories.

The next two words in the phrase—"market value"—are typically construed together. Further, "market value" is traditionally stated in decisional and administrative law more fully as "fair market value." The Supreme Court has defined "fair market value" as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of

²³ Dr. Gray recalculated the royalty shares with Reel Funds and Venevision allocated to IPG. The shares did not change to the second decimal place. 6/4/13 Tr. at 490 (Gray).

²⁴ The remaining MPAA claims that were dismissed were not included in MPAA's petition or Dr. Gray's calculations.

²⁵ Mr. Galaz claims to challenge 44 claims that appear in Exhibit R-2 to his written testimony. Only 43 claims appear in that exhibit, one of which IPG challenged unsuccessfully in the Preliminary Hearing.

²⁶ Notwithstanding the compulsory nature of statutory licenses under the Copyright Act, in most contexts, the Act requires the Judges to consider the evidentiary value of directly negotiated licenses in setting rates and terms for royalty fees and in determining distributions of those fees.

relevant facts.” *U.S. v. Cartwright*, 411 U.S. 546, 551 (1973).

Dr. Gray defined relative market value in his Written Direct Testimony as “the price at which the right to transmit a program carried on a distant broadcast signal would change hands between a willing buyer (a CSO) and a willing seller (a copyright owner), neither being under any compulsion to buy or sell.” Gray WDT at 7–8; *see also* 6/4/13 Tr. at 445–46 (Gray).²⁷

The Judges note that application of these definitions to the present dispute is neither simple nor obvious. More particularly, it is necessary to further define the various terms that comprise the foregoing definition of relative market value, which the Judges undertake below.

a. The Hypothetical Willing Seller (the Copyright Owner)

The copyright owner seeks to maximize profit from the licensing of the program to the CSO. Since the copyright owner’s marginal costs are low and approaching zero (most of the costs incurred in creating the work are sunk, fixed costs), this means simply that the copyright owner wants to maximize the revenue it receives from the CSO as a result of the retransmission of its program over the distant broadcast signal by that CSO. Given the minimal marginal costs and the “public good” aspect of a copyrighted work, the copyright owner, as the hypothetical willing seller, will always have an incentive to sell at some positive price, but will likely engage in bargaining whereby the copyright owner threatens to refuse to grant the license unless its (undisclosed) reservation price is offered. *See Beser, et al, supra*, at 81 (When the CSO fails to offer a price which the hypothetical seller requires, “the program supplier * * * will simply refuse to allow the cable system to carry the program”).

b. The Hypothetical Willing Buyer (the CSO)²⁸

For the CSO, the economics are less straightforward. The revenue that the

CSO earns from retransmitted broadcasts is a consequence of the impact of the retransmissions on the sale of subscriptions to its cable bundles (packages or tiers). This is in contrast to the terrestrial commercial television station whose signal is being retransmitted, and whose revenues are received from advertisers.²⁹

To the CSO, the program offered by the Copyright Owner is an input—a factor of production—utilized to create the product that the CSO sells to its customers, *viz.*, the various subscription bundles of cable channels. In a hypothetical program market, a CSO would buy a program license for retransmission, as it would purchase any factor of production, up to the level at which that “factor price” equals the “Marginal Revenue Product” (MRP) of that program. In simple terms, this means that a CSO in a competitive factor market would only pay a price for a program if the revenue that the CSO can earn on the next (marginal) sale of the final product is at least equal to that price. In practical terms, why would a CSO pay \$50,000 to retransmit a program that the CSO estimates would add only \$40,000 to the CSO’s subscriber revenue? *See Beser, et al., supra*, at 80 (“To the cable system the value of carrying the signal is equal to the revenue from the extra subscribers that the programming will attract and any higher subscriber fees it can charge less the additional costs of importing the program.”).³⁰

pertinent experience in connection with the negotiation of copyright licenses, 6/5/13 Tr. at 928–29 (Galaz); 6/6/13 Tr. at 1218–20 (Robinson); 6/4/13 Tr. at 439 (Gray), and none of those witnesses offered any competent evidence as to how a CSO actually makes programming decisions. IPG attempted to introduce only the written testimony of a producer of a syndicated children’s show, Mr. Thomas Moyer, who claimed to have knowledge of the relative unimportance of viewership/ratings to CSOs. (The parties were unable to arrange for a *de bene esse* deposition of Mr. Moyer to perpetuate his testimony. He was subpoenaed by MPAA to testify in person at the hearing, but he did not appear. Accordingly, the Judges did not admit Mr. Moyer’s Written Rebuttal Testimony, 6/6/13 Tr. at 1288–98; 1302–04. We note, though, that Mr. Moyer’s written testimony indicated that he lacked the experience necessary to provide the Judges with competent testimony regarding the programming decision-making process of a CSO.)

²⁹ Since CSOs must retransmit a station’s signal in its entirety (including advertisements) without alteration, it cannot sell advertising on retransmitted broadcast channels. 17 U.S.C. 111(c)(3).

³⁰ If the CSO, as a program purchaser, had some degree of monopsony power in the factor market, it could pay less than a price equal to MRP, but still would buy programs in a *quantity* at which MRP would equal the Marginal Cost of an additional program.

c. “Neither Being Under Any Compulsion To Buy or Sell”

The “compulsion” limitation within the definition of “fair market value” is often treated as a truism and thus not subject to analysis. Here, in the actual (*i.e.*, non-hypothetical) market, any program available for purchase by the CSO already has been pre-bundled by the terrestrial broadcast station into that station’s signal. The CSO cannot selectively purchase for retransmission some programs broadcast on the retransmitted station and decline to purchase others; rather, the signal is purchased *in toto*. 17 U.S.C. 111(c)(3).

Is this required bundling a form of “compulsion” upon the CSO? It is *compelled* to take every program pre-bundled on the retransmitted distant station, despite the fact that the various pre-bundled programs would each add different monetary value (or zero value) in the form of new subscriber volume, subscriber retention, or higher subscription fees. Indeed, some programs on the retransmitted station may have so few viewers that the CSO—if it had the right—would decide not to purchase such low viewership programs.

Further, certain programs may have more substantial viewership, but that viewership might merely duplicate viewership of another program that generates the same sub-set of subscribers. For example, hypothetically, the viewers of reruns of the situation comedy “Bewitched” may all be the same as the viewers of reruns of “I Dream of Jeannie,” a similar supernatural-themed situation comedy. However, “Bewitched” may have fewer viewers than “I Dream of Jeannie.” The hypothetical, rational profit-maximizing CSO that had already paid for a license to retransmit “I Dream of Jeannie” would not also pay for “Bewitched” in this hypothetical marketplace, because it fails to add marginal *subscriber revenue* for the CSO.³¹ Rather, the rational CSO would seek to license and retransmit a show that marginally increased subscriber revenue (or volume, if market share was more important than profit maximization), even if that program had lower total viewership than “Bewitched.”

If the Judges were to measure “relative market value” in these instances solely by viewership of the programs actually retransmitted, then the valuation process would arguably fail the “non-compulsion” requirement of the “fair market value” standard

³¹ Indeed, this notion is akin to the “displacement” argument advanced in the present proceeding by IPG. Galaz WRT at 14.

²⁷ Although the Judges *generally* agree with Dr. Gray’s application of the definition of “fair market value” to the definition of “relative market value,” the Judges note that Dr. Gray omitted from the latter the requirement that the parties have “reasonable knowledge of relevant facts.” This condition is important because issues regarding the hypothetical parties’ knowledge of such facts as viewership levels and CSO program bundling strategies are relevant to this Determination, as discussed in the analysis of the IPG Methodology, *infra*.

²⁸ Dismayingly, none of the parties proffered admissible testimony (written or oral) of a witness with knowledge of CSO programming. Both Mr. Galaz and Dr. Robinson, on behalf of IPG, and Dr. Gray, on behalf of MPAA, noted their lack of

identified by Dr. Gray. Why should a CSO (hypothetically) be *compelled* to pay for a program based on its higher viewership, but which adds less value than another show with lower viewership? By extension, why should the Judges, in this distribution proceeding, establish program value solely as if such compulsion were present?

Simply put, the hypothetical, rational profit-maximizing CSO would not pay copyright owners based solely on levels of viewership. Rather, the hypothetical CSO would (i) utilize viewership principally as a heuristic to estimate how the addition of any given program might change the CSO's subscriber revenue, (ii) attempt to factor in the economics of various bundles; and (iii) pay for a program license (or eschew purchasing that license) based on that analysis.

On the other side of the coin, is the seller, *i.e.*, the copyright owner, under any "compulsion" to sell? In the actual market, one in which the terrestrial station signal is acquired in a single specific bundle by the CSO, the answer appears to be yes, there is "compulsion." The copyright owner cannot carve out its program and seek to maximize its value independent of the pre-packaged station bundle in which it exists.

Of course, in the "hypothetical market" that the Judges are charged with constructing, it would be inappropriate not to consider the inherent bundling that would occur. That is, the bundling decision is a "feature" rather than a "bug" in even a hypothetical market in which the statutory license framework does not exist. Thus, while the copyright owner could offer to supply its program at a given price, the equilibrium market price at which supply and demand would intersect would reflect the CSO's demand schedule, which is based in part upon the fact that the buyer, *i.e.*, the CSO, would pay only a price that is equal to (or less than) the MRP of that program in a bundle to be purchased by *subscribers*.³²

To summarize, the hypothetical market the Judges will apply in this Determination contains the following participants and elements: (1) The hypothetical seller is the owner of the copyrighted program; (2) the hypothetical buyer is the CSO that acquires the program as part of its

hypothetical bundle of programs; and (3) the absence of compulsion requires that the terrestrial stations' initial bundling of programs does not affect the marginal profit-maximizing decisions of the hypothetical buyers and sellers.³³

B. Analysis of Parties' Proposals

1. Program Suppliers Category

a. Description of the MPAA Methodology and Proposed Allocation

As in past distribution proceedings, MPAA's calculation of relative market value is based almost exclusively upon estimated levels of viewership of the distantly retransmitted programs, as based on data received from Nielsen.³⁴ MPAA contends that program viewership provides a direct and reasonable measure of program market value, especially because the allocation of MPAA Program Suppliers' royalties in this Phase II proceeding involves examination of relatively homogeneous programming. Gray WDT at 3.³⁵

The initial steps of MPAA's proposed relative market value calculation entail selection of a sample of television stations whose programming would be the basis for the remuneration of royalties to MPAA-represented claimants (Kessler Sample). Ms. Marsha Kessler, a former executive of MPAA, testified that she obtained from Cable Data Corporation (CDC)³⁶ a listing of broadcast stations that were retransmitted as distant signals by cable

systems from 2000 through 2003. Ms. Kessler, believing they were not compensable in the Program Suppliers category, then excluded Canadian, Mexican, and public television stations.³⁷ Ms. Kessler ranked stations according to the number of distant subscribers and then selected her sample stations based on a combination of fees generated and distant subscribers. Finally, because the Nielsen ratings do not differentiate between distant and local viewing, Ms. Kessler performed a local county analysis for each sample station to identify local county viewing data for each station so that it could be filtered out by Nielsen. 6/3/13 Tr. at 114–27 (Kessler); Kessler WDT at 11–13 and Appendices D, E, and F. The Kessler Sample was not (and was not intended to be) a random sample. 6/3/13 Tr. at 122–25 (Kessler).

Ms. Kessler forwarded the Kessler Sample stations to Nielsen, instructing Nielsen to measure viewing only in the counties identified by MPAA as outside the originating station's local county viewing area.³⁸ Ms. Kessler further instructed Nielsen to place the programming in one of the eight Phase I categories. 6/3/13 Tr. at 114–27 (Kessler); Kessler WDT at 13–14.

Mr. Paul Lindstrom, Senior Vice President at Nielsen, testified that Nielsen provided MPAA with so-called "diary data" for each of the Kessler Sample stations measuring viewing in non-local counties during sweeps periods.³⁹

³³ A focus on marginal costs and benefits is not only efficient for the hypothetical buyers and sellers, but also for the consuming public: "Optimal program diversity will result if cable operators and the public they serve pay to copyright owners the marginal value derived from viewing syndicated programming." Willard, *supra*, at 1518.

³⁴ Nielsen ratings are a statistical estimate of the number of homes tuned to a program based upon a sample of television households selected from all television households. The findings within the sample are "projected" to national totals. A rating measures what percentage of the universe of television households are tuned in to a program. Lindstrom WDT at 3.

³⁵ Dr. Gray tested this conclusion through a three-step estimation approach. First, Dr. Gray calculated the relative volume of MPAA programming and IPG programming. Second, Dr. Gray calculated the relative viewership of MPAA programming and IPG programming (as described *infra*). Third, Dr. Gray examined statistically whether, given the same level of viewership, MPAA and IPG programming affect subscriber growth differently. Dr. Gray hypothesized that, in the absence of a meaningful difference in how the two sets of programs affect subscriber growth, viewership is the most economically sound measure of relative market value. Gray WDT at 14–15.

³⁶ CDC collects and analyzes information on Statements of Account (SOAs) that cable systems file with the Licensing Division of the Copyright Office. CDC makes the collected information available to users by purchase, either on an as-needed basis or by subscription. CDC is the only company providing such a service. Martin WDT at 1–2.

³⁷ Some programs broadcast on Canadian and Mexican stations are, in fact, compensable in the Program Suppliers category. This issue is discussed *infra*.

³⁸ Nielsen data are recorded on a county-by-county basis. MPAA provided Nielsen with its list of distant viewing counties to enable Nielsen to produce estimates of distant cable viewing to the Kessler Sample stations. Nielsen conducted this custom analysis for MPAA. Lindstrom WDT at 5; 6/3/13 Tr. at 288 (Lindstrom).

³⁹ During 2000–2003, Nielsen utilized two basic data collection instruments in its syndicated services: Meters and diaries. Lindstrom WDT at 4. A set meter is an electronic device attached to a television set in a particular household that detects the channel to which the television is tuned. The data from these set meters are converted into household ratings. Nielsen collected household meter data year-round in a random sample of households in selected geographic markets across the United States, *i.e.*, Nielsen's metered markets, during 2000–2003. Lindstrom WDT at 4; Gray WDT at 15–16, 18–19.

Diaries are paper booklets in which each person in the household records viewing information. In 2000–2003, diary data were collected in Nielsen's diary markets during the months of November, February, May, July, and in some cases October and March, which are also known as the "sweeps" ratings periods (Nielsen Diary Data). Nielsen mailed seven-day diaries to homes randomly selected by Nielsen to keep a tally of when each television in the household was on, what it was tuned to, and

Continued

³² As discussed below, IPG suggests the need for such a bundling-based analysis. However, as also discussed below, the IPG Methodology itself fails to address the economics of bundling and thus serves only as a weak counter-argument to MPAA's viewer-centric analysis.

MPAA also retained the services of the Reznick Group P.C. (now known as CohnReznick LLP) (Reznick) to match title information provided by MPAA to compensable retransmissions of television broadcasts. Mr. Kelvin Patterson of Reznick testified that he and his team at Reznick conducted two analyses for MPAA—one based on Tribune Media Services (Tribune) data and the other based on MPAA title information provided to Reznick by MPAA. The first required Reznick to examine broadcast television station logs provided by Tribune for the Kessler Sample stations and a separate set of sample stations provided by MPAA’s economics expert, Dr. Jeffrey Gray (Gray Sample), for each of the years 2000, 2001, 2002 and 2003, and exclude those program titles that are not compensable for purposes of this proceeding in the Program Suppliers category: (1) Programs identified in the Tribune Data as broadcast type ABC, CBS and NBC (*i.e.*, network programming);⁴⁰ (2) programs airing on WGN’s local feed (WGN-local) that were not simultaneously broadcast on WGN’s national feed (WGN-A); and (3) programs not identified by Tribune as a series, special, movie, documentary or “other.” Patterson WDT at 2–3.

The second analysis conducted by Reznick involved using a computer to electronically compare a list of program titles claimed by MPAA-represented claimants, prepared and provided by MPAA,⁴¹ with the refined Tribune data to identify every distant retransmission of each MPAA title on the Kessler Sample stations and the Gray Sample stations. Patterson WDT at 3; 6/3/13 Tr.

at 250–51 (Patterson).⁴² Thus, Reznick was able to identify the potentially compensable broadcasts of MPAA titles that aired on the Kessler Sample and Gray Sample stations. Patterson WDT at 5.

MPAA retained Dr. Gray to design an allocation methodology and compute the results of that methodology (the MPAA Methodology). 6/4/13 Tr. at 440 (Gray). Dr. Gray testified that his analysis seeks to determine the “relative market value” of copyrighted programs based on an econometric model of estimating viewership that takes into account program characteristics and popularity that affect the program’s predicted relative viewership. His approach analyzes program volume, program viewing and the number of subscribers for the Gray Sample—a stratified random sample of 120 stations generated by Dr. Gray from CDC data for each year from 2000 to 2003. Gray WDT at 3, 9; Gray WRT at 25, 30.

Dr. Gray relied upon five data sources in creating and applying the MPAA Methodology: (1) CDC data for all cable system operators in the United States who distantly retransmitted broadcast signals, which included information about the signals they distantly retransmitted as well as the total number of distant subscribers to those signals; (2) a custom analysis of Nielsen Diary Data, prepared by Mr. Lindstrom, which shows the viewing of distant retransmissions of the Kessler Sample stations during Nielsen’s “sweeps” periods; (3) information from Nielsen’s local ratings, derived from individual television electronic meters, provided on a quarter-hour basis, for 24 hours a

day, seven days a week, and 12 months a year (Local Ratings Data), for the Gray Sample stations; (4) Tribune Data, including the program title, time of broadcast, information on the station, whether or not the station was a network affiliate, the type of programming, the actors and directors and other information about the program, for every broadcast in the Kessler Sample stations and Gray Sample stations; and (5) the Reznick data analyses, in the form of a list of MPAA compensable programming, based upon start time, date and station, and a separate list of IPG compensable programming, based upon start time, date and station. 6/4/13 Tr. at 447–50 (Gray).

Dr. Gray analyzed the relationship between distant viewing and local ratings, holding constant the number of distant subscribers, which, Dr. Gray posited, is equivalent to examining distant ratings and local ratings. Dr. Gray testified that he found a positive and strong statistically significant relationship between distant viewing and local ratings. After establishing this correlation, Dr. Gray built his full econometric model combining all of the five data sets he identified in his written testimony.⁴³ Dr. Gray then utilized a multiple regression analysis to predict distant viewing for every single quarter hour, for every single program, 24 hours a day, seven days a week, 12 months a year, for all four years.⁴⁴ 6/4/13 Tr. at 465–67 (Gray).

Based on his analysis, Dr. Gray calculated the viewership (and distribution) shares of MPAA and IPG programming as follows.⁴⁵

MPAA PROPOSED VIEWERSHIP AND DISTRIBUTION SHARES

	2000	2001	2002	2003 (percent)
MPAA	98.93	99.72	99.69	99.80
IPG	1.07	0.28	0.31	0.20

who in the household was watching. Over the course of a four-week sweeps period, Nielsen mailed diaries to a new panel of randomly selected homes each week. At the end of each sweeps period, all of the viewing data from the individual weeks were aggregated into Nielsen’s database. Each sweeps period yielded a sample of approximately 100,000, aggregating to 400,000 households over the course of a year. Lindstrom WDT at 4; Gray WDT at 15–16; 6/3/13 Tr. at 290, 296–98, 312 (Lindstrom).

⁴⁰ In fact, Reznick failed to exclude the network programming and this task was performed by Dr. Gray. 6/3/13 Tr. at 246–48 (Patterson); 6/4/13 Tr. at 488–89 (Gray).

⁴¹ The MPAA list of titles was compiled initially through program title information that was submitted by the claimants it represents and from its own research. MPAA then prepared a

certification report listing the titles that it believed were attributable to the claimant, and supplied a certification form for the claimant to sign verifying that it has the right to claim retransmission royalties for the works listed. Each claimant was instructed to strike through any titles for which it was not entitled to claim retransmission royalties. Kessler WDT at 9–10.

⁴² To the extent the comparison analysis conducted by Reznick left programs that did not match, Reznick conducted a manual matching exercise. As part of this manual matching exercise, whenever Reznick found titles that appeared to be a match, it would check for other examples of the same or similar program titles manually inspecting each to determine if the programs were in fact a match. For non-English programs, Reznick employed a native Spanish speaker to assist in the manual matching exercise. 6/3/13 Tr. at 273–74 (Patterson).

⁴³ These data sets provided Dr. Gray with information on distant viewing, local ratings, the number of distant subscribers, the quarter hour of the day the broadcast took place, station affiliation, and which programs were compensable in these proceedings.

⁴⁴ All of Dr. Gray’s calculations of program viewing were based on the Gray Sample. The Kessler Sample was merely used to make projections of distant viewing from the Local Ratings Data. 6/4/13 Tr. at 452–54 (Gray).

⁴⁵ The lower and upper bounds of the 95% confidence intervals for the estimates of MPAA’s viewership shares for each year are: For the year 2000, 98.84% to 99.03%; for the year 2001, 99.69% to 99.75%; for the year 2002, 99.64% to 99.74% and for the year 2003, 99.77% to 99.83%. Gray WRT at 26 n.25. 6/5/13 Tr. at 754–58 (Gray).

Gray WRT at 26.

(1) Evaluation of the MPAA Methodology

IPG opposes a relative market value assessment based solely on Nielsen viewership data. One broad attack by IPG on the use of Nielsen viewership data is that the data do not exist until *after* the distantly retransmitted programs are broadcast. Thus, IPG argues, the hypothetical willing buyer and willing seller could not utilize this viewership data *ex ante* to negotiate a license. Galaz WDT at 13. Although this criticism is literally correct, it does not preclude the use of such viewership data to estimate the value of the hypothetical licenses. Ideally, it might be preferable to utilize *anticipated viewership* as the viewership-centric measure of value.

However, such a measure would be quite difficult to assemble in a Section 111 proceeding. Each type of program would be subject to its own yardstick: For example, reruns could be valued based on their prior ratings, newly syndicated programs could be valued based on the past ratings of comparable programs; and first-run televised movies could be valued based on their box-office value in theaters. The gathering and presentation of such evidence likely would be prohibitively expensive, and the evidence in the record before the Judges does not permit such an analysis.

Another attack by IPG on the use of Nielsen Data concerns the so-called “zero viewing” problem. The quarter-hour sampling points within the Nielsen Data relied upon by MPAA contain, annually, between 76% and 82% “zero viewing” sampling points. Robinson WRT at ¶ 31. In previous Phase II proceedings the existence of these “zero viewing” sampling points had not been adequately explained by MPAA’s witnesses, which diminished the value of its methodology. *See, e.g., 1993–1997 Librarian Order*, 66 FR at 66449–50. However, in *this* proceeding, MPAA has provided adequate evidence to demonstrate, to the satisfaction of the Judges, that the incidence of so-called “zero viewing” does not preclude the Judges’ reliance in part upon the Nielsen data, subject to adjustments in the allocations to acknowledge some imprecision arising out of the “zero viewing” sample points.

First, to be precise, the percentages of “zero viewing sampling points” represent—on a station-by-station basis—the percent of total sampling points at which no sample households with Nielsen diaries recorded that they were viewing that station. These percentage figures do not represent that

“zero households” had viewed a particular program over the entirety of the sampling period, *i.e.*, the sweeps period at issue. Although both Mr. Galaz and IPG’s economist, Dr. Laura Robinson, were critical of the high incidence of “zero viewing” sampling points, Dr. Robinson proffered no evidence, 6/6/13 Tr. at 1195–97 (Robinson), and Mr. Galaz proffered no admissible or credible evidence, 6/5/13 Tr. at 844 (Galaz),⁴⁶ that the Nielsen data had revealed *particular programs* with “zero viewing” throughout the Nielsen diary sampling periods. This distinction is critical, because, under the hypothetical market construct, royalties would accrue on a program-by-program basis to individual copyright owners, not to the distantly retransmitted stations.

Second, the Judges agree with Mr. Lindstrom that these “zero viewing” sampling points can be considered important elements of information, rather than defects in the process. As Mr. Lindstrom testified, when doing sampling of counts within a population, it is not unusual for a large number of zeros to be recorded, 6/4/13 Tr. at 391–93, 410 (Lindstrom), and those “zero viewing” sample points must be aggregated with the non-zero viewing points. 6/3/13 Tr. at 323 (Lindstrom).

Third, as Dr. Gray testified, when those zeros are included with non-zero data from the sample in a regression that correlates local and distant viewing, the zeros are placed in an appropriate statistical context. 6/14/13 Tr. at 614–15 (Gray).⁴⁷

Fourth, as Mr. Lindstrom testified, distantly retransmitted stations typically have very small levels of viewership in a television market fragmented (even in the 2000–2003 period) among a plethora

of available stations. 6/4/13 Tr. at 393 (Lindstrom). Thus, it would be expected, not anomalous, for Nielsen to record some zero viewing for any given quarter-hour period within the diary sampling (sweeps) period.

Despite these reasonable and credible explanations of the “zero viewing” sampling points, the Nielsen data are not without problems. The sample size is not sufficient to estimate low levels of viewership as accurately as a larger sample. Mr. Lindstrom acknowledged that “[t]he relative error on any given quarter-hour for any given station * * * would be very high.” 6/3/13 Tr. at 303 (Lindstrom)—an acknowledgment echoed by Dr. Gray. 6/4/13 Tr. at 518–19 (Gray) (agreeing that, with samples of 10,000 households, there is a high relative error rate for each quarter-hour “point estimate”).

Furthermore, Mr. Lindstrom acknowledged that he had not produced the margins of error or the levels of confidence associated with the Nielsen viewership data, despite the fact that such information could be produced. 6/3/13 Tr. at 391–93, 410 (Lindstrom). Without this information, the reliability of any statistical sample cannot be assessed. (By way of comparison, Dr. Gray provided with his conclusions the margin of error and the level of confidence associated with his findings. Gray WRT at 26 n.25.). The Judges infer that, had such information underscored the reliability of the Nielsen data, it would have been produced by MPAA.

Thus, the Judges conclude that viewership as measured after the airing of the retransmitted programs is a reasonable, though imperfect proxy for the viewership-based value of those programs.⁴⁸

(2) Dr. Gray’s Economic Analysis

The Judges credit the economic analysis undertaken by Dr. Gray, as set forth in his Written Direct Testimony

⁴⁶ Mr. Galaz claimed in his live testimony that he prepared a document which set forth his calculation of the percent of programs that Nielsen reported to have had zero viewing. Under questioning from the Judges, however, Mr. Galaz acknowledged that he had never provided such a document to MPAA, 6/5/13 Tr. at 846–47, and IPG did not seek to have that document admitted into evidence. 6/5/13 Tr. at 888–89.

⁴⁷ To adapt an analogy used by Dr. Gray, if one were attempting to estimate the number of left-handed individuals in the United States, by sampling ten people in New York City and Washington, DC, respectively, it would not be implausible to find zero left-handed people in the sample. However, when the sampling expanded to ten people each in Boston, Los Angeles, and San Francisco, one might find two, three, and perhaps even seven left-handed individuals, respectively, in those cities. While only about 10% of the population in the United States may be left-handed, it would make no more sense to eliminate (as supposedly unrepresentative) the zero counts in New York and Washington than it would to exclude the (unusually high) count of seven left-handed individuals in San Francisco. *See* 6/4/13 Tr. at 606–08 (Gray).

⁴⁸ Since it is a *hypothetical* market we are constructing, it also would not be unreasonable to hypothesize that the CSO and the Copyright Owner might negotiate a license that would contain a provision adjusting the value of the license, post-viewing, to reflect actual viewership. *See* 6/4/13 Tr. at 562–63 (Gray). In that regard, the Judges refer to one of the pre-conditions for relative market value—the one omitted by Dr. Gray—“reasonable knowledge of relevant facts.” Actual viewership would be a “relevant fact” that could be applied if post-viewing adjustments to the license fees were hypothetically utilized by the bargaining parties. While the parties might find the “transaction costs” of such post-viewership negotiations and adjustments to be prohibitive in practice, it is the function of the Judges, as noted *supra*, to construct a hypothetical market in which such transaction costs are avoided. *See* O. Williamson, *The Economic Institutions of Capitalism* 45 (1985) (one aspect of the “transaction cost problem” is the inability of the negotiating parties to obtain “perfect information.”).

and in his oral testimony at the hearing, *see, e.g.*, Gray WDT at 3; 6/4/13 Tr. at 446 (Gray), but not without some reservations. First, the Judges agree with Dr. Gray that viewership can be a reasonable and directly measurable metric for calculating relative market value in cable distribution proceedings. Indeed, the Judges conclude that viewership is the initial and predominant heuristic that a hypothetical CSO would consider in determining whether to acquire a bundle of programs for distant retransmission, subject to marginal adjustments needed to maximize subscribership. Nevertheless, the Judges are reluctant to rely *solely* on viewership data merely because the marginal bundling adjustments are not readily measurable. The Judges must also consider subscriber fees and subscribership levels, even if the evidence relating to subscribership creates only a crude proxy for addressing the economic bundling issue.

The Judges agree with Dr. Gray that the programs within the Program Suppliers category are more homogeneous *inter se* than they are in comparison with programs in either the Sports Programming or the Devotional Programming claimant categories. 6/4/13 Tr. at 446, 455–57 (Gray). This relative homogeneity suggests that a rational CSO would not be as concerned with whether different programs would attract different audience segments (compared with more heterogeneous programming) and therefore such a CSO would rely to a greater extent on absolute viewership levels. The Judges note, however, that Dr. Gray's position appears to conflict with Ms. Kessler's testimony which described the mix of MPAA programs as quite varied (*i.e.*, heterogeneous), Kessler WDT at 4–6. Taken at face value, Ms. Kessler's observation suggests that the hypothetical CSO would consider whether there was a fragmentation of viewership among MPAA-represented programs that would reduce its reliance on absolute viewership and increase its use of a bundling analysis to exploit such heterogeneity. This disparity confirms the Judges' conclusion that viewership data alone cannot form the basis for measuring relative market value. Notwithstanding Ms. Kessler's testimony to the contrary, the Judges accept Dr. Gray's analysis of the lack of an impact of changes in programming upon subscribership. Dr. Gray's analysis suggests that, even if program heterogeneity could affect value via the CSO's bundling choices, there is no

evidence in the current record to suggest that the programs of the claimants whom IPG represents have created a programming mix that would increase the value of those programs *vis à vis* programs of non-IPG claimants. 6/4/13 Tr. 554–55 (Gray); Gray WDT (Amended) at App. C.

Moreover, the Judges rely upon Dr. Gray's use of a *random* sample of approximately 120 stations annually from 2000 through 2003 to construct his viewership estimates. Indeed, Dr. Gray's sample is the only *random* sample of stations presented to the Judges in this proceeding, and must be contrasted with the admittedly *non-random* sampling of stations undertaken by Mr. Galaz and Ms. Kessler.⁴⁹

⁴⁹ Statistically valid unbiased inferences regarding an entire population cannot be projected from a non-random sample. The Judges, therefore, remain troubled by the fact that Dr. Gray did not insist on scrapping Ms. Kessler's non-random sample and require (as a condition to his engagement as MPAA's expert) the use of a random sample. Instead, Dr. Gray attempted to mitigate the non-randomness of Ms. Kessler's sample by shrinking his 120-station random sample to the 70-station sample which constituted the overlap between the Kessler Sample stations and the Gray Sample stations. However, a non-randomly selected sub-set of an otherwise random sample is not a random sub-set. The 70 stations were then used to derive a mathematical relationship between local and distant viewing. That relationship was then used in Dr. Gray's regression analysis to project distant viewing from the local viewing data for all 120 sample stations, and, ultimately, to make a prediction with regard to the distant viewing of the entire population of MPAA and IPG programs that were distantly retransmitted by every CSO.

The Judges credit Dr. Gray's testimony that MPAA refused to abandon the Kessler Sample and that, without it, Dr. Gray would not have had access to distant signal viewing data with which to perform his regression. The Judges likewise credit Dr. Gray's testimony as to the fact that scrapping Ms. Kessler's non-random sample likely would have caused additional expense for MPAA, as MPAA would have been required to rely on Dr. Gray's truly random sample and develop a new set of distant signal viewing data through additional work by CDC, Nielsen and Reznick. 6/4/13 Tr. at 583–587 (Gray). Although the Judges understand why MPAA might have chosen to avoid this additional cost and rely, at least in part, on a compromised sample of stations, that cost-saving decision compromises the Judges' ability to give more weight to Dr. Gray's analysis than they have done in this Determination.

Dr. Gray attempted to demonstrate that the use of the flawed Kessler Sample did not damage the accuracy of his analysis. The Kessler Sample suffered from Ms. Kessler's intentional selection of the largest stations in terms of subscribers, and her "intuitive" decision to cut off her sampling at a particular level. 6/3/13 Tr. at 122 (Kessler). This bias toward larger stations could have prejudiced IPG, if the programs of the IPG-represented claimants were relatively more concentrated on smaller stations than were the MPAA-represented programs. To test that possibility, Dr. Gray ran his regression including only the bottom quartile of the Kessler Sample stations and found no change in viewership estimates. 6/4/13 Tr. at 469–70, 500, 570 (Gray). Of course, that fact only indicates that, within the Kessler Sample, changes in broadcast station size did not affect IPG negatively, and at best

The Judges view favorably Dr. Gray's decision to increase his data base by supplementing it with Nielsen *meter* data—the Local Ratings Data—in order to determine, in his regression analysis, the relationship between local viewing and distant viewing of the retransmitted stations. 6/4/13 Tr. at 448. The use of this additional data allowed Dr. Gray to observe approximately 1.6 million quarter-hours of local viewing data (6/4/13 Tr. at 465, 467) strengthening his results, and further mitigating any potential problems with the zero viewing sampling points contained in the Nielsen *Diary* Data.

Nevertheless, the Judges find that Dr. Gray's decision not to summarize the results of his regression as it related to other independent variables, especially the impact of time of day upon the level of distant viewing of the transmitted stations, is a shortcoming in his analysis. Dr. Gray conceded that there was a strong positive relationship between time of day and the level of distant viewing, 6/4/13 Tr. at 639–41 (Gray), which could support IPG's use of a Time Period Weight Factor as a basis for allocating royalties. 6/4/13 Tr. at 639–43 (Gray).

In addition, the Judges recognize the criticism, leveled by IPG's expert witness, Dr. Laura Robinson, that Dr. Gray wrongly replaced Nielsen *Diary* Data regarding distant viewing for the six months of sweeps, with his projected data, derived from Nielsen *Local Viewing* Data. Dr. Robinson also noted that, if Dr. Gray had retained his Nielsen *Diary* Data, with its approximate 80% of zero viewing sampling points, he should have had at least a level of approximately 40% zero viewing points in his final analysis. 6/6/13 Tr. at 1202–03.

In response to Dr. Robinson's criticism, Dr. Gray ran the distant viewership numbers in the manner suggested by Dr. Robinson. To use Dr. Gray's terminology, using these "supplant" values would have resulted in an even greater allocation to MPAA at the expense of IPG. 6/6/13 Tr. at 1328–30 (Gray). IPG objected that it had not been afforded the details of this analysis previously, but the Judges discount that objection, given that Dr. Robinson had not presented her critique of this aspect of Dr. Gray's analysis until her live testimony at the hearing.⁵⁰

only suggests that inclusion of even smaller stations (excluded from the Kessler Sample or within Dr. Gray's 120-station sample but excluded from the 70-station Kessler/Gray overlapping sample) would not have increased viewership estimates for IPG.

⁵⁰ The Judges note that Dr. Robinson was engaged by IPG only two months prior to the June 2013 hearing, and one month prior to the May 2013

The Judges also acknowledge Dr. Robinson's criticism that, given the level of zero viewing in the raw Nielsen diary data, Dr. Gray should have used a different regression model than his selected Poisson regression. Dr. Gray defended his use of the Poisson regression model, however, as a basis to perform a regression with such a large number of zeros in the data. Although Dr. Robinson suggested the use of another form of regression to account for the relatively high number of zeros, (such as a negative binomial regression), she did not provide any alternative analysis to indicate how such a different form of regression would have changed the results, and Dr. Robinson acknowledged that she therefore was unable to state that Dr. Gray's conclusions were wrong. 6/6/13 Tr. at 1279–81 (Robinson). Moreover, to the extent the zeros in the raw data reflect non-viewing of television at the moment of sampling, or to the extent they reflect poor sampling of small numbers of viewers, a separate regression to account for the zero viewing may have been appropriate. As noted, *supra*, Mr. Lindstrom and Dr. Gray both pointed out, however, small numbers of viewers, indeed zero viewers, is a meaningful sample point, given the small number of viewers of distantly retransmitted broadcast stations, so those zeros should not be isolated and treated differently.

Another of IPG's criticisms of the MPAA Methodology concerns the treatment of Canadian and Mexican stations. *See, e.g.*, Galaz WRT at 40–41. MPAA and Dr. Gray did, in fact, exclude Canadian and Mexican television stations from the Kessler and Gray Samples. 6/3/13 Tr. at 116 (Kessler); 6/5/13 Tr. at 753–54 (Gray). This appears to have resulted from the belief that programs carried on those stations were either not compensable, or not included in the Program Suppliers category. 6/3/13 Tr. 116–17 (Kessler); 6/5/13 Tr. at 754 (Gray). This exclusion was an error.

Section 111(c)(1) unambiguously grants cable system operators a statutory license to retransmit Canadian and Mexican broadcast stations.⁵¹ Section 111(d)(3)(A) likewise directs that royalties deposited by cable system operators under the statutory license be

distributed to any copyright owner whose work was included in a secondary transmission made by a cable system of a non-network (*i.e.*, not ABC, CBS or NBC) television program on a distant signal basis. The statute provides no exception for works carried in retransmissions of primary signals that originate in Canada or Mexico. MPAA's conclusion that programs carried on Canadian and Mexican broadcast stations are noncompensable was erroneous.

As to the categorization of programs carried on Canadian and Mexican Stations, the parties in the Phase I proceeding in this matter stipulated to definitions of the following program categories: Program Suppliers; Joint Sports Claimants; Commercial Television; Public Broadcasting; Devotional Claimants; Canadian Claimants; National Public Radio; and Music Claimants. The definitions are mutually exclusive and, in the aggregate, comprehensive. *See Stipulation of the Parties on the Issues of Program Categorization and Scope of Claims*, Docket No. 94–3, CARP CD 90–92 (Feb. 23, 1996), at 3 (stating that Phase I categories identical to those used in this proceedings were “intended to cover all non-network television programs on all stations retransmitted as distant signals by U.S. cable systems * * * on a mutually exclusive basis”). In other words, every compensable program must fall within one and only one program category.

The “Canadian Claimants” category is defined as:

All programs broadcast on Canadian television stations, except (1) live telecasts of Major League Baseball, National Hockey League, and U.S. college team sports, and (2) other programs owned by U.S. copyright owners.

Kessler WRT at Addendum B.

The first exception describes programs that fall within the Sports Programming category.⁵² The second exception includes all programs owned by U.S. copyright owners. Although programs falling within the second exception could, potentially, fall into any of the other categories, in reality they are all within the Program Suppliers⁵³ category. *Phase I Order*, 75

FR at 26800 n.5; *see also* Written Direct Testimony of Janice de Freitas, Ex. CDN–1, Docket No. 2008–2 CRB CD 2000–2003 (Phase I) at 2.

There is no “Mexican Claimants” category, so any compensable programming carried on distantly retransmitted Mexican broadcast stations must fall into one of the other agreed categories (other than Canadian Claimants), including the Program Suppliers. It is simply incorrect to conclude that all compensable programming on distantly retransmitted Canadian and Mexican broadcast stations falls outside the Program Suppliers category. MPAA erred by excluding Canadian and Mexican stations from its analysis.

The Judges do not have before them sufficient evidence to determine the precise degree to which MPAA's exclusion of Canadian and Mexican stations has affected their proposed distribution. The Judges can, however, construct a rough estimate based on IPG's sample stations, which were selected because they were the most widely retransmitted television stations based on fees generated. 6/5/13 Tr. at 762 (Galaz).

Of the 223 stations that IPG included in its sample for royalty year 2000, 12 stations (5.38% of the total) were Canadian. Those stations represented 4.46% of the overall number of distant subscribers covered in the IPG sample. Only two Mexican stations (0.90% of the total) were included in the IPG sample, representing 0.02% of distant subscribers covered in the IPG sample. The Judges conclude that the effect on MPAA's proposed distribution shares of excluding Mexican stations from their regression analysis was negligible. On its face, however, the impact of excluding the Canadian stations may not be negligible.

Evidence from the Phase I proceeding suggests that a relatively small amount of the programming on Canadian broadcast stations is allocable to the Program Suppliers category. Written Direct Testimony of Janice de Freitas, Ex. CDN–1, Docket No. 2008–2 CRB CD 2000–2003 (Phase I) at 6 and Ex. CDN–1–I. Assuming, for purposes of this rough estimate, that there are half as

deadline for the filing of rebuttal testimony. 6/6/13 Tr. at 122 (Robinson). IPG's delay in that regard may have compromised its expert's ability to construct a more comprehensive critique of Dr. Gray's analysis. As Dr. Robinson was engaged after the Preliminary Hearing in this matter, IPG, by its own delay in retaining Dr. Robinson, was unable to seek additional discovery based upon her purported need for additional information.

⁵¹ Section 111(c)(4) places certain geographic restrictions on such retransmissions.

⁵² The “Joint Sports Claimants” category is defined as:

Live telecasts of professional and college team sports broadcast by U.S. and Canadian television stations, except for programs coming within the Canadian Claimants category * * *.

Kessler WRT at Addendum B.

⁵³ The “Program Supplier” category is defined as: Syndicated series, specials and movies, other than Devotional Claimants programs as defined [in the stipulation]. Syndicated Series and specials are

defined as including (1) programs licensed to and broadcast by at least one U.S. commercial television station during the calendar year in question, (2) programs produced by or for a broadcast station that are broadcast by two or more U.S. television stations during the calendar year in question, and (3) programs produced by or for a U.S. Commercial television station that are comprised predominantly of syndicated elements, such as music video shows, cartoon shows, “PM Magazine,” and locally hosted movie shows.

Id.

many programs on Canadian stations that fall in the Program Suppliers category than there are on U.S. stations, Canadian stations carried roughly 2.7% of retransmitted programs in the Program Suppliers category. It thus appears that a small, but not negligible, number of programs in this category are carried on Canadian stations.

For the exclusion of the relatively small percentage of programs broadcast on Canadian stations to have a material impact on the relative shares computed by MPAA, the proportion of MPAA-represented programs to IPG-represented programs on Canadian stations would have to differ fairly significantly from that on U.S. stations. There is no evidence to suggest that it does.⁵⁴ The Judges conclude that, while the exclusion of the Canadian stations was an error, it did not have a significant effect on the relative shares computed by MPAA.

b. Description of the IPG Methodology and Proposed Allocation

IPG's distribution methodology (the IPG Methodology) was created by Mr. Raul Galaz, an employee and former principal of IPG. Mr. Galaz testified that the IPG Methodology was formed in response to a perceived bias in the distribution methodology historically utilized by MPAA. Galaz WDT at 7–8. IPG espouses that each and every program that is broadcast by a terrestrial station, and is thereafter retransmitted by a CSO pursuant to the Section 111 statutory license, is entitled some portion of the fees deposited with the U.S. Copyright Office. *Id.* at 14.

Upon the commencement of this Phase II proceeding, IPG obtained updated data from CDC of all Form 3 retransmitted stations from 2000–2003, which data included the number of households to which any particular terrestrial signal was retransmitted, as well as the fees generated from the retransmission of any particular terrestrial signal. IPG ranked such stations on a year-by-year basis, according to the cable retransmission fees generated by such stations. *Id.*, at 16; 6/5/13 Tr. at 762 (Galaz).

IPG thereafter acquired from Tribune Media the programming data for the 200

broadcast stations (IPG Sample) generating the largest amount of cable retransmission fees, and supplemented such information with broadcast data already acquired by IPG for calendar years 2000 and 2001.⁵⁵ Galaz WDT at 16; *see* Galaz WDT at Ex. IPG–4; 6/5/13 Tr. at 762, 790 (Galaz).⁵⁶ The IPG Sample was not (and was not intended to be) a random sample. 6/5/13 Tr. at 765–66, 808–09 (Galaz). From this programming data IPG identified 11,213,962 individual broadcasts that took place on the IPG Sample stations which, after omitting non-compensable programming (e.g., network feed programming), yielded 8,515,052 compensable broadcasts representing 39,969 discrete titles. Galaz WDT at 17.

According to Mr. Galaz, IPG then undertook to confirm with all of the claimants that it represents exactly which titles and broadcasts were owned or controlled by them. IPG submitted to each claimant the list of compensable titles, and requested that the claimant respond to IPG with a list of any titles on the list that correspond to titles owned or controlled by the claimant. In some circumstances IPG determined which titles and broadcasts were owned or controlled based on information within the IPG contracting documents, or information previously provided to IPG in the course of IPG's representation. Galaz WDT at 18; 6/5/13 Tr. at 791–93 (Galaz). Based on that vetting process, IPG determined that 1,297 compensable programs were owned or controlled by IPG-represented claimants, reflected within 541,586 compensable broadcasts. Galaz WDT at 10; *see* Galaz WDT at Exs. IPG–2, 3.

The weight that IPG accorded to any given compensable broadcast was the product of (x) a "Station Weight Factor," (y) a "Time Period Weight Factor," and (z) the duration of the broadcast. Galaz WDT at 18–23.

IPG took two alternative approaches to creating a Station Weight Factor. One assigned a value to a station based on the number of distant cable subscribers that received retransmissions of that station's broadcasts. The other assigned a value to a station based on the amount

of distant cable retransmission fees generated by the station, as disclosed in CDC data. IPG presented three alternative computations based on each of the Station Weight Factors and an average of the two. Galaz WDT at 18; *see* Galaz WDT at Ex. IPG–4; Galaz WRT at Exs. R–19 and R–20; 6/5/13 Tr. at 769, 768, 779–81 (Galaz).

The Time Period Weight Factor reflects the fact that average television viewership varies by time of day. IPG based the Time Period Weight Factor on Nielsen Media Research's assessment of distant viewership of all persons during 48 half-hour dayparts that was, in turn, based on Nielsen viewing data from 1997.⁵⁷

Mr. Galaz testified that the IPG Methodology seeks to replicate the decisions actually made by CSOs by looking at data representative of such decisions, and data reflecting the aggregate of information that a CSO could have had at the time of its decision to retransmit a broadcast station. 6/5/13 Tr. at 761, 763, 768 (Galaz). He explained that it was for this reason that IPG used its Time Period Weight Factor in preference to projections of actual viewership. IPG avers that actual viewership can only be known after a broadcast has taken place; prior to a CSO's decision to retransmit a particular broadcast, the CSO may only reasonably predict on a day-by-day basis the relative viewership of a program based on the timing of its placement on a station's lineup. Galaz WDT at 20–22; 6/5/13 Tr. at 770–75 (Galaz).

As a final step, the broadcast length of all compensable broadcasts appearing in the IPG analysis was applied against the "Station Weight Factor(s)" and the "Time Period Weight Factor" to create a weighted value for each of the broadcasts. After segregating the compensable broadcasts into their respective Phase I categories, including the Program Suppliers category, IPG summed the resulting weighted values for (i) all IPG-claimed broadcasts, and (ii) all MPAA-claimed broadcasts. Galaz WDT at 24; Galaz WRT at Exs. R–19 (revised) and R–20 (revised); 6/5/13 Tr. at 778 (Galaz). By comparing these

⁵⁴ In his analysis of the IPG Methodology, Dr. Gray evaluated the effect of IPG's inclusion in its methodology of non-U.S. programs carried on Canadian stations and concluded that it resulted in an overstatement of the value of IPG's claims (perhaps reflecting a higher proportion of non-U.S. programming among IPG-represented programs than among MPAA-represented programs). Gray WDT at 15–17. Unfortunately that analysis sheds no light on the effect of MPAA's exclusion of U.S. programs on Canadian stations on its calculation of relative shares of royalties.

⁵⁵ IPG's samples consisted of 223 stations for 2000; 231 stations for 2001; 200 stations for 2002; and 200 stations for 2003. Galaz WDT at 16; *see* Galaz WDT at Ex. IPG–4; 6/5/13 Tr. at 762, 790 (Galaz).

⁵⁶ The stations surveyed as part of the IPG Sample accounted for 89–93% of the aggregate number of Form 3 subscribers receiving retransmitted commercial signals in any given year during 2000–2003, and 94–96% of the distant cable retransmission fees generated by commercial signals in any given year during 2000–2003. Galaz WDT at 17; *see* Galaz WDT at Ex. IPG–5; 6/5/13 Tr. at 765, 788 (Galaz).

⁵⁷ IPG contended that it was reasonable to use 1997 data for this purpose because Nielsen Media Research publications indicate that there have been only trace changes in U.S. daypart viewing, even over the span of decades. Galaz WDT at 21–22; 6/5/13 Tr. at 775–77 (Galaz). IPG's calculations originally were based on six dayparts, rather than 48. When this issue was brought to IPG's attention, IPG produced revised calculations based on the 48 dayparts described in Mr. Galaz' written testimony. *See* Galaz WRT at Exs. R–19 (revised) and R–20 (revised). In live testimony, Mr. Galaz stated that the error was inadvertent. 6/5/13 Tr. at 774 (Galaz).

“Sum Weighted Values” for IPG and MPAA, IPG calculated its proposed relative distribution shares.

Using a Station Weight Factor based on numbers of distant subscribers, IPG

computed the following proposed relative distribution shares.

IPG PROPOSED DISTRIBUTION SHARES
[SWF—Subs]

	2000 (percent)	2001 (percent)	2002 (percent)	2003 (percent)
MPAA	90.52	92.77	94.54	94.95
IPG	9.48	7.23	5.46	5.05

Galaz WRT, Ex. R–19, at 1 (revised).
Using a Station Weight Factor based on fees generated, IPG computed the

following proposed relative distribution shares.

IPG PROPOSED DISTRIBUTION SHARES
[SWF—Fees]

	2000 (percent)	2001 (percent)	2002 (percent)	2003 (percent)
MPAA	90.60	92.57	94.56	94.86
IPG	9.40	7.43	5.44	5.14

Id.
Using an average of the shares produced by the previous two methods,

IPG computed the following proposed relative distribution shares.

IPG PROPOSED DISTRIBUTION SHARES
[SWF—Subs and fees]

	2000 (percent)	2001 (percent)	2002 (percent)	2003 (percent)
MPAA	90.56	92.67	94.55	94.91
IPG	9.44	7.33	5.45	5.09

Id.

(1) Evaluation of the IPG Methodology

IPG, through the written testimony of its sole direct witness, Mr. Galaz, did not definitively state that its methodology was an application of “relative market value.” Galaz WDT at 11. At the hearing, on cross-examination, Mr. Galaz initially declined to state that the IPG Methodology was consonant with any “economic principle.” Under further cross-examination, Mr. Galaz testified that he thought that the IPG Methodology fits under the “relative market value” standard. 6/5/13 Tr. at 942–47.

The IPG Methodology for distributing royalties in this Phase II proceeding eschews explicit reliance upon viewership levels. Rather, IPG asserts that “certain obvious factors that would otherwise affect a negotiated license between a producer and an exhibitor are not present in the compulsory licensing scheme * * *.” Galaz WDT at 12. The

Judges understand IPG’s position in this regard to be premised on the assertion that the hypothetical CSO is interested in maximizing subscriber fees (*i.e.*, profits, assuming constant costs) or subscriber levels (*i.e.*, market share), rather than viewership.

IPG is not incorrect in its assertion of the different “factors” (*i.e.*, incentives) that apply to a CSO, as opposed to an “exhibitor” (*i.e.*, a broadcast station) in this retransmission context. The Judges conclude, however, that the substance of IPG’s direct case suffers from three major defects:

First, the maximization of subscriber revenues or levels is not divorced from viewership levels. Rather, a CSO would attract subscribers on a distantly retransmitted station only to the extent that the programs it offered were demanded by consumers who intended to view the programs. Indeed, even IPG’s expert witness, Dr. Robinson, acknowledged that, in her professional experience, viewership was a factor in determining the value of a retransmitted

television program. 6/6/13 Tr. at 1219–21 (Robinson).

Second, it is true, as IPG asserts, that since a CSO is concerned about which programs the marginal subscriber might prefer, a CSO may prefer a program with a smaller level of viewership if that viewership represents *new* subscribers, instead of a show with a large audience that consists only of *existing* subscribers. IPG has not, however, proffered any evidence applying such a marginal analysis in the present proceeding. Dr. Robinson testified that such an analysis would require a “more sophisticated model,” incorporating perhaps “game theoretic” principles to demonstrate how a CSO would maximize subscribership through such a marginal viewer analysis. 6/6/13 Tr. at 1230 (Robinson). Likewise, Dr. Gray testified that such an approach would require a “more sophisticated” analysis than the parties’ evidence permitted in this proceeding. 6/4/13 Tr. at 547 (Gray).

Third, the IPG Methodology does not follow from the foregoing critique. Rather, the IPG Methodology uses factors that tend to treat as similar programs that are distantly retransmitted at the same time of day, run for the same number of minutes per program or that appear on the same station. Thus, the IPG Methodology considers neither the initial necessity of considering absolute viewership nor the subsequent necessity of considering the iterative process (“perhaps a “game theoretic” approach, as Dr. Robinson testified). Simply put, aside from any other defects in the IPG Methodology, it is not true to its own critique of a viewership-based analysis.

(2) The Testimony of Mr. Galaz

IPG’s direct case also suffers from the fact that it was presented by a particular single witness, Mr. Galaz. For the following reasons, Mr. Galaz, to say the least, was an imperfect messenger to convey the IPG Methodology.

First, the Judges note that Mr. Galaz was previously convicted and incarcerated for fraud in the context of copyright royalty proceedings—a fraud that caused financial injury to MPAA. 6/5/13 Tr. at 932 (Galaz). In connection with that fraud, Mr. Galaz also admittedly lied in a cable distribution proceeding much like the instant proceeding. *Id.* Mr. Galaz’s fraud conviction and prior false testimony compromises his credibility, especially in this proceeding.

Second, Mr. Galaz, the founder and previously an owner of IPG, is now an employee of IPG. Galaz WDT at 7. IPG is currently owned by his mother and sister. 6/5/13 Tr. at 1079 (Galaz). Thus, he clearly has a self-interest which renders the IPG Methodology—of which he is the architect—less credible than a methodology created by an outside expert.⁵⁸

Third, Mr. Galaz acknowledged that he is not an economist, statistician, or econometrician, and that he had no particular expertise that would permit him to opine as an expert on the construction of a methodology to establish “relative market value” in this distribution proceeding. 6/5/13 Tr. at 928–30. The Judges gave serious consideration to granting the motion *in limine* filed by MPAA and the SDC at the start of the hearing to bar Mr. Galaz’s testimony on the basis that he was offering expert opinion but was not qualified as an expert witness. For the reasons stated on the record, however, the Judges denied the *in limine* motion and decided to permit Mr. Galaz to testify and accord his testimony whatever weight it warranted. 6/3/13 Tr. at 58–64. Nothing in Mr. Galaz’s testimony indicates that the Judges should give his testimony any weight, except to the limited extent certain general principles he utilized in his IPG Methodology provide a basis to modify marginally the distribution allocations arising from the MPAA Methodology.

Fourth, Mr. Galaz did not indicate that he had any experience working for or on behalf of a CSO, and he admitted that he had not discussed the IPG Methodology with any CSO. 6/5/13 Tr. at 970–72. Thus, his suppositions as to how a CSO might construe viewership lack foundational support. Moreover, since Mr. Galaz is not an economist, he cannot apply microeconomic theory in order to opine upon the economic incentives to which a hypothetical CSO might respond when acquiring a bundle of licenses from owners of program rights.

(3) Additional Problems With the IPG Methodology

In addition to the foregoing overarching and substantial defects in

IPG’s direct case, particular elements of the IPG Methodology are also deficient.

First, IPG contends that the purpose of the IPG Methodology is to compensate every claimant, even if there is no evidence that there was any viewership of the claimant’s program.⁵⁹ The Judges find such a methodology unacceptable. Even if viewership as a metric for determining royalties may be subject to some adjustment in light of the economic incentives facing a CSO, there is certainly no basis to allow for compensation in the absence of *any* evidence of viewership. *See* 6/5/13 Tr. at 950 (Galaz).

Second, IPG’s “sample” of stations was not selected in a statistically random manner. *Id.* at 957 (Galaz). Thus, it suffers from the same infirmity as the Kessler Sample relied upon in part by MPAA. However, unlike MPAA, IPG made no effort to mitigate the problems with its non-random sample. Indeed, at the hearing, Mr. Galaz attempted to disavow that his list of stations was a sample, and instead re-defined his station selections as a “survey.” *Id.* at 959 (Galaz).

Third, the IPG Methodology, with its reliance on the so-called “Station Weight Factor,” grossly ignores viewership, resulting in a much higher relative market value for relatively low-rated programs. The following two pairs of examples from Dr. Gray’s Written Rebuttal Testimony, unrebutted by Mr. Galaz at the hearing, show how the IPG Methodology calculates the relative value of two programs as identical, merely because they aired at the same time of day, even though the MPAA-claimant programs (“Judge Joe Brown” and “Pokémon”) had substantially higher viewership levels than the IPG-claimant programs (“Animal Adventures” and “Dragon Ball Z”) which aired in the same time period:

TABLE 2—EXAMPLES SHOWING THAT FACTORS OTHER THAN STATION, TIME OF DAY, AND PROGRAM TYPE IMPACT DISTANT VIEWING OF A PROGRAM *

Date/time	Station	Program	Program type	Entity claiming	Nielsen viewing households	Gray viewing households	IPG estimated relative value
7/8/2000: 16:30	KRON	Animal Adventures	FIRST-RUN SYN- DICATION.	IPG	740	952	2,358,915
5/21/2000:							

⁵⁸ It is noteworthy that IPG engaged Dr. Robinson to critique the MPAA methodology and Dr. Gray’s analysis, but, as Dr. Robinson testified, she was not asked to defend the IPG Methodology created by Mr. Galaz. 6/6/13 Tr. at 1226 (Robinson).

⁵⁹ Mr. Galaz asserted that compensating each and every copyright owner affected by the Section 111

statutory license was a constitutional imperative. Galaz WDT at 14; IPG PFF at 12. Counsel for IPG echoed this “takings” argument in his closing statement. 6/6/13 Tr. at 1454–55. IPG did not brief or argue this issue, so it is not before the Judges for decision. Nevertheless, the Judges note that, on its face, this argument proves too much. In addition to

statutory licenses, the Copyright Act includes a number of outright exceptions (*e.g.*, fair use under Section 107) where a copyright owner’s exclusive rights are limited without *any* compensation whatsoever. IPG’s Fifth Amendment takings argument would, absurdly, render these exceptions unconstitutional.

TABLE 2—EXAMPLES SHOWING THAT FACTORS OTHER THAN STATION, TIME OF DAY, AND PROGRAM TYPE IMPACT DISTANT VIEWING OF A PROGRAM *—Continued

Date/time	Station	Program	Program type	Entity claiming	Nielsen viewing households	Gray viewing households	IPG estimated relative value
16:30 7/30/2001:	KRON	Judge Joe Brown	FIRST-RUN SYN- DICATION.	MPAA	1,840	1,635	2,358,915
16:30 2/5/2001:	WPIX	Dragon Ball Z	CARTOON	IPG	2,898	5,586	63,748,728
16:30	WPIX	Pokémon	CARTOON	MPAA	10,888	8,228	63,748,728

Notes: “Gray Viewing Households” refers to predicted household distant viewing based on the econometric estimation procedure described in my Direct Testimony. IPG Estimated Relative Value is based on Mr. Galaz’s SWF Subs measure. Programs in the two sets of examples also have identical IPG Estimated Relative Value based on Mr. Galaz’s SWF Fees measure. Nielsen Viewing Households represents the number of households viewing the program distantly as reported in the Nielsen Diary Data and averaged over the quarter hour increments that constitute the full program time.

Gray WRT at 8.

Fourth, the IPG Methodology, with its additional reliance on the so-called “Time Period Weight Factor,” ascribes

equal relative value to MPAA-claimed programs and IPG-claimed programs that aired on the same station and for the same duration, despite substantially

different levels of viewership. The following comparison of programs that aired on WGN in 2001 demonstrates this outcome.

TABLE 4—EXAMPLE OF MY [DR. GRAY’S] AND MR. GALAZ’S ESTIMATED RELATIVE VIEWING OF RETRANSMITTED WGN BROADCASTS

Date/time	Program	Entity claiming	Nielsen viewing households	Gray viewing households	IPG’s TPWF	IPG relative value
5/12/2001: 17:00	Andromeda	MPAA	117,501	102,065	0.612244	1,220,182,908
2/3/2001: 10:00	Video Computer Store	IPG	6,754	12,325	0.612244	1,220,182,908
5/6/2001: 17:00	Coach	MPAA	117,088	143,757	0.612244	610,091,454
7/14/2001: 9:30	As Seen on TV PC	IPG	10,282	14,322	0.612244	610,091,454

Notes: “Gray Viewing Households” refers to predicted household distant viewing based on the econometric estimation procedure described in my Direct Testimony. IPG Estimated Relative Value is based on Mr. Galaz’s SWF Subs measure. Programs in the two sets of examples also have identical IPG Estimated Relative Value based on Mr. Galaz’s SWF Fees measure. Nielsen Viewing Households represents the number of households distant viewing the program as reported in the Nielsen Diary Data and averaged over the quarter hour increments that constitute the full program time.

Id. at 22.

Fifth, compounding the problems with the IPG Methodology, Mr. Galaz utilized 1997 data to estimate the level of viewing throughout the broadcast day, rather than data that was contemporaneous with the 2000 through 2003 royalty distribution period at issue in this proceeding.⁶⁰ 6/5/13 Tr. at 973 (Galaz).

Sixth, Mr. Galaz claimed originally to have utilized half-hour viewing segments to create his Time Period Weight Factor. However, as Dr. Gray explained in his Written Rebuttal Testimony, Mr. Galaz in fact did not utilize half-hour viewing segments in his analysis, but rather utilized the six “daypart” categories upon which IPG

had relied in the 1993–1997 Phase II proceeding, which reliance was criticized by the CARP convened for that prior proceeding. Gray WRT at 20–21. Mr. Galaz acknowledged this problem, described it as a good faith error, and changed his calculations by substituting the half-hour viewing segments for his “daypart” categories in his application of the Time Period Weight Factor. *Compare* Galaz WRT at Exs. R–19 and R–20 (original) with Galaz WRT at Exs. R–19 and R–20 (revised).

What is particularly noteworthy about this issue is the extent to which the use by Mr. Galaz of the “daypart” categories, as compared to his claimed use of the half-hour segments, inured to IPG’s benefit. As Mr. Galaz testified, 6/6/13 Tr. at 1155–56 (Galaz), his use of the “daypart” categories significantly inflated IPG’s claimed percentage of the

Program Suppliers category in each of the years at issue as follows.

For 2000, IPG’s claimed percentage was inflated by 23%, *i.e.*, from 9.47% if Mr. Galaz had correctly used half-hour segments, to 11.62% when he instead utilized “daypart” categories.

For 2001, IPG’s claimed percentage was inflated by 32%, *i.e.*, from 7.33% if Mr. Galaz had correctly used half-hour segments, to 9.71% when he instead utilized “daypart” categories.

For 2002, IPG’s claimed percentage was inflated by 27%, *i.e.*, from 5.45% if Mr. Galaz had correctly utilized half-hour segments, to 6.9% when he instead utilized “daypart” categories.

For 2003, IPG’s claimed percentage was inflated by 21%, *i.e.*, from 5.09% if Mr. Galaz had correctly utilized half-hour segments, to 6.33% when he instead utilized “daypart” categories.

Id.

Given the serious issues of credibility regarding Mr. Galaz’s testimony, as discussed *supra*, the Judges cannot state

⁶⁰ Mr. Galaz asserted that information published by Nielsen supported his use of 1997 data. *See supra* note 57. Mr. Galaz lacks the requisite expertise on which to base that conclusion, however.

with any confidence that these rather significant errors—all of which would have substantially inflated IPG's allocation and were left uncorrected until they were disclosed in Dr. Gray's Written Rebuttal Testimony—were not the product of design rather than inadvertence.

Seventh, the IPG Methodology, although *intended* to eschew viewership as a primary measure, nonetheless is based implicitly upon viewership, as it considers the duration of a program as an indicia of value (a program of relatively longer duration would be more valuable because of its *viewership* over a longer period), as well as the time of day a program is aired (there are *more viewers* at some times of day than others).

(4) Limited Applicability of the IPG Methodology

Although the Judges reject the *wholesale* application of the IPG Methodology in this Determination, they do note that the IPG Methodology attempts to address certain issues of value which are worthy of consideration when the Judges determine the extent, if any, to adjust an allocation based upon the MPAA viewership-based methodology.

First, Dr. Gray acknowledged that the IPG Methodology was an “approximation” of Dr. Gray's own methodology, albeit a “*crude* approximation.” Gray WRT at 4 (*emphasis added*).

Second, as noted *supra*, Dr. Gray acknowledged that even his own regression analysis showed a strong correlation between the time of day when a program aired and the level of viewership of the distantly retransmitted programs. This correlation generally affirms that IPG's Time Period Weight Factor is *not irrational*, even though IPG's emphasis on that factor, and its failure to acknowledge the much greater importance of per-program viewership, is *unreasonable*.

Third, IPG's argument that lower-rated shows might enhance subscriber fees or levels more than higher-rated shows is a logical economic concept. In that regard, the Judges understand IPG's theory to be an application of the bundling problem in economics, an application that can be summarized as follows.

—A CSO does not make decisions based upon maximizing viewership, but rather upon maximizing subscriber revenues (assuming costs are constant) or by maximizing subscriber volume (if maximizing market share is more important than maximizing profits at any given point in time).

—A CSO maximizes subscriber revenue or volume by creating a mix of program types (even within a given Phase I category).

—The CSO's maximizing mix of program types is not (merely) a function of total viewership.

—Rather, the CSO will *bundle* different programs in order to obtain additional new (*i.e.*, marginal) subscribers.

—These new subscribers may be attracted to programs at viewership levels that are lower than the viewership levels of other shows available for licensing, but the latter shows may simply have more of the *same* viewers who have already subscribed based upon the other shows in the CSO lineup.⁶¹

—Therefore, assessing the relative market value of retransmitted programs on the basis of relative viewership alone is an imperfect measurement because viewership does not explicitly account for the CSO's incentive to *bundle* programs in a manner designed to maximize subscriber fees (profits) or levels (market share).

When bundling is considered, the economic analysis shifts from the relatively straightforward profit maximization analysis advanced by MPAA (using viewership as a measure of value) to a more nuanced valuation assessment. In essence, the hypothetical CSO whose buying decisions we must consider would create an ersatz station by bundling programs in a combination that would maximize its expected revenues or volumes (with all other costs assumed constant). As previously explained, an attempt to maximize profits would result in the purchase of program licenses at a fee (the marginal cost of the program input) up to the anticipated MRP from that program in a competitive market.

So stated, IPG's argument is rational in *theory*. However, as both Dr. Gray and Dr. Robinson testified, such a concept would require a much more detailed economic and game theoretic model of CSO programming than was presented by IPG in this proceeding.⁶²

⁶¹ At the hearing, the Judges offered the fanciful example that an instructional show with low viewership might be more valuable to a CSO, on the margin, than reruns of “Bewitched” with higher viewership, if the “Bewitched” viewers were merely redundant of, or displacing, viewers of another similar show, *e.g.*, “I Dream of Jeannie,” which was already part of that CSO's offering. 6/4/13 Tr. at 551–53.

⁶² There is a wealth of economic literature analyzing the economics of bundling, *i.e.*, the impact of the offering for joint sale or purchase two or more products or services. See generally B. Kobayashi, *Does Economics Provide a Reliable Guide to Regulating Commodity Bundling by Firms?*

Further, such an argument would require evidence and testimony from someone with actual knowledge of CSO programming decisions and strategies pertaining to the bundling of programs. See *supra* note 28. In these two regards, (an undeveloped theory and the absence of factual support) the Judges cannot adopt the IPG Methodology.

(5) Conclusion Regarding the IPG Methodology

For the foregoing reasons, the Judges conclude that the IPG Methodology cannot be applied to establish the basis for an allocation of the royalties in the Program Suppliers category. However, given the few generally correct principles, noted above, within the IPG Methodology, and given certain imperfections in the MPAA Methodology, the Judges conclude that the allocations otherwise established by a strict application of the MPAA Methodology should be adjusted downward *marginally*.

c. Allocations Within the Program Suppliers Category

The Judges conclude that the MPAA Methodology should be accorded substantial weight in establishing the zone of reasonableness for the allocations in the Program Suppliers category. By contrast, in light of the Judges' conclusion that the IPG Methodology is seriously deficient, the IPG methodology cannot be used in establishing the parameters of the zone of reasonableness for the allocation of royalties in the Program Suppliers category.

A Survey on the Economic Literature on Bundling, 1 J. of Competition L. & Econ. 707 (Dec. 2005). For example, bundling is utilized by sellers who possess market power as a means of “price discrimination,” by tying two products with different elasticities of demand together in order to convert the “consumer surplus” which would exist in the absence of a tying or bundling, into higher profits for the seller. See G. Stigler, U.S. v. Loew's Inc.: *A Note on Block Booking*, 1963 Sup. Ct. Rev. 152 (1964). Thus, a rational bundling CSO with market power would not simply seek to acquire a copyright license to a program that, in isolation, would add more subscriber fees, but rather would determine which combination of programs extracted the most profits, based upon the relative inelasticity of demand for popular shows. To cite another issue created by bundling, the program owner (with monopolistic power over its own relatively more valuable program) might hold out for a license royalty that appropriated for itself the profits from bundling, thus frustrating the CSO's attempt to price discriminate by assembling a roster of shows which would create the profit-maximizing bundle. This is a variant of the classic and indeterminate problem of price-setting between a monopolist and a monopsonist, as to which the game theoretic principles referred to by Dr. Robinson would be applicable. These are the types of issues which the IPG Methodology simply does not address.

The Judges conclude that the “zone of reasonableness” in the Program Suppliers category in this proceeding corresponds with the range established by the 95% confidence interval that Dr. Gray computed for MPAA’s proposed distribution allocation. *See supra* note 45; Gray WRT at 26 n.25. In light of the

noted defects in the MPAA Methodology, and given the few generally correct principles identified by IPG as noted above, the Judges conclude that the distribution levels should be set at the lower bound (“lower” in terms of percent of distributions awarded to MPAA) of Dr.

Gray’s confidence interval (and, therefore, the lower bound of the “zone of reasonableness”).

Accordingly, the Judges establish the following annual distribution levels, finding them to be within the zone of reasonableness:

ALLOCATION IN THE PROGRAM SUPPLIERS CATEGORY

	2000 (percent)	2001 (percent)	2002 (percent)	2003 (percent)
MPAA	98.84	99.69	99.64	99.77
IPG	1.16	0.31	0.36	0.23

2. Devotional Category

a. The IPG Methodology

IPG proposes the identical formula for the Devotional allocations as it proposed for the Program Suppliers category. Specifically, IPG applies a methodology that considers: (1) The station(s) on which a devotional program appeared, thereby providing the number of subscribers receiving the distantly retransmitted station and the fees paid by those subscribers (the Station Weight Factor); (2) the time of day during which each devotional program was broadcast (the Time Period Weight Factor); and (3) the length of each devotional program. These factors are then multiplied and aggregated for IPG and MPAA programs. IPG then uses those aggregate program values to determine the relative value as between the IPG-claimed Devotional Programs and the SDC-claimed Devotional Programs.⁶³

IPG’s formula produced absurd results in the Devotional category, as it did in the Program Suppliers category. The Judges note Dr. Brown’s Amended Written Rebuttal Testimony, in which he explained how, for example, in the Devotional category, application of the IPG Methodology bizarrely: (1) Would cause a program with 167% of a competing program’s national rating to receive *less than 30%* of the value assigned to that competing program; and (2) would allow programs comprising 0.119% of the entire Devotional category to receive more than 18% of all Devotional category revenue simply because that 0.119% of the programs were broadcast on WGNA, which was retransmitted to a disproportionately high number of subscribers. Brown WRT (Amended) at 10–13.

⁶³ As in the Program Suppliers category, IPG computes three alternative Station Weight Factors: A pure subscriber-level factor, a pure fee-based factor and an average of the two.

More generally, in the discussion regarding the Program Suppliers distributions, the Judges have explained in detail the deficiencies in the IPG Methodology, and the few positive attributes arising from—to use Dr. Gray’s language—the “crude approximation” of relative market value created by the IPG Methodology. The Judges adopt in this Devotional category analysis those prior statements regarding the attributes of the IPG Methodology.⁶⁴

b. The (Proffered) SDC Methodology

The SDC explicitly requests that, in the Devotional category, the Judges adopt the MPAA Methodology to establish relative market value. Indeed, the SDC claims to have relied upon, *inter alia*, the non-random Kessler Sample of stations, as well as the Nielsen Diary Data originally provided to MPAA and about which Mr. Lindstrom testified. As discussed below, the Judges have declined to rely on the results of the application of the SDC Methodology because the SDC offered evidence of the application of its methodology in an untimely manner, in contravention of the Judges’ procedural rules. Therefore, the Judges cannot use the SDC Methodology to determine the allocation of the Phase II share of royalties in the Devotional category.

The SDC’s direct case consisted of the written and oral testimony of Dr. William Brown and the written testimony of Mr. Michael Little, which was admitted pursuant to stipulation of the SDC and IPG. *Stipulation Regarding Testimony of Michael D. Little* (May 31,

⁶⁴ IPG also asks the Judges to order the SDC to reimburse IPG for costs it incurred to develop data also relied upon by the SDC. IPG PFF (Devotional) at 22. However, IPG did not file a motion seeking such reimbursement, and the Judges are not aware of any statutory or regulatory authority pursuant to which such costs can be shifted in this proceeding.

2013).⁶⁵ Mr. Little’s testimony describes the diversity of the SDC programming. Little WDT at 1–4. He identifies 23 SDC-represented claimants and their respective programs during the years 2000–2003. *See* Little WDT at Ex. 2.

The heart of the SDC’s case rests on Dr. Brown’s testimony. Dr. Brown, a Professor and Research Fellow at the School of Communication and the Arts at Regent University in Virginia Beach, Virginia, served as the SDC’s expert witness in the field of communication theory and research. *See* 6/6/13 Tr. at 1371 (Brown). In his direct testimony, Dr. Brown asserted that ratings are a “valuable tool” in determining Phase II allocations. Brown WDT at 4. He described how

Nielsen compiled data on an overnight basis using a scientific sample of several thousand households electronically metered to monitor TV viewing, and during sweeps periods (pre-selected, 4-week cycles) using tens of thousands of diaries of households that keep records of TV viewing activities.

Id. Consequently, Dr. Brown opined, that “[t]he most useful quantifiable data is Nielsen viewing data, projected to distant households.” ⁶⁶ *Id.* at 5.

At no time during the direct phase of its case did the SDC offer any testimony, written or oral, specifically setting forth the application of the MPAA methodology to Devotional Programming. Rather, the SDC attempted to introduce such evidence during the *rebuttal* phase of its case by proffering the written and oral testimony of Mr. Alan G. Whitt, the

⁶⁵ The Judges excluded Exhibit 3 to Mr. Little’s testimony for reasons discussed *supra*. *See* text accompanying note 14.

⁶⁶ Dr. Brown also proposed that the Nielsen data be “supplemented, where applicable, with Bortz [Survey] study data.” Brown WDT at 5. However, in his Amended Written Rebuttal Testimony, Dr. Brown testified: “I conclude that the Bortz survey data cannot be used to supplement the MPAA/Nielsen viewing data to determine the comparative value of programs within the single genre of devotional programming.” Brown WRT (Amended) at 16.

founder and principal of IT Processing, Inc. The purpose of Mr. Whitt’s testimony was to provide the underlying data upon which Dr. Brown would rely to form his opinion as to the proper distribution of royalties for the Devotional category for the years 2000 through 2003. Specifically, Mr. Whitt gathered: (1) The Kessler non-random sample of stations; (2) the Nielsen data prepared on behalf of MPAA; (3) the Tribune Media Services database of programs that aired during the relevant calendar years; and (4) the MPAA “Reports of Household Viewing Hours for the MPAA Copyright Royalty Databases” for 2000–2003. He then identified programs as “Devotional” or, synonymously, “Religious.” Whitt WRT at 3–8. In his rebuttal testimony, Dr. Brown explained how he used Mr. Whitt’s work to arrive at the SDC’s proper distribution:

Nielsen’s quarter hour results were * * * transmitted to Mr. Whitt * * *. Mr. Whitt received the data and, utilizing sophisticated software programming and the data from Tribune Media Services (TV DATA) of programs telecast in 2000–2003, [Mr. Whitt] determined the programs to which the viewing information was attributed. * * *

Mr. Whitt organized programming data for entities he identified as religious or devotional.

Brown WRT (Amended) at 14–15 (*emphasis added*).

The Judges excluded Mr. Whitt’s testimony on the basis that the SDC was required by the Judges’ regulations to provide Mr. Whitt’s testimony in its *direct* case. *See* 37 CFR 351.4(b)(1), (c)(contents of and amendment of Written Direct Statements) and § 351.10(e)(introduction of studies and analyses); 6/6/13 Tr. at 1352–53, 1361–62 (to the extent Whitt’s testimony provided foundation for Dr. Brown’s testimony, it “needed to be included in the direct case of SDC.”).

By failing to provide Mr. Whitt’s testimony until its rebuttal case, a mere three weeks before the hearing, the SDC prejudiced IPG and, in essence, engaged in trial by ambush, in violation of the letter and spirit of the Judges’ procedural rules. More specifically, by not including Mr. Whitt’s testimony in its direct case, the SDC deprived IPG of the opportunity to review the work undertaken by Mr. Whitt. Although Dr. Brown, in his Written Direct Testimony, indicated that the SDC intended to

utilize the MPAA Methodology,⁶⁷ the SDC’s application of that methodology by Mr. Whitt was not properly disclosed in the SDC’s direct case. Consequently, the Judges cannot consider the application of the SDC Methodology in their determination of the Phase II distribution to the Devotional category.

c. Allocations in the Devotional Category

In light of the foregoing, the Judges are faced with a Hobson’s Choice. The SDC has failed to introduce evidence of its distribution methodology in a timely manner. IPG has set forth a methodology that suffers from a number of flaws and which has validity only in certain limited respects, as explained above. The Judges are, nevertheless, obligated to reach a determination based on the existing record. Given the evidentiary constraints, and in order to allocate the royalties in the Devotional category in a manner within the “zone of reasonableness,” the Judges hereby conclude as follows.

IPG’s proposed allocations, and the SDC’s proffered allocations (unsubstantiated in the SDC’s direct case) are as follows.

PROPOSED ALLOCATIONS IN THE DEVOTIONAL CATEGORY

Year	Party	SDC proposed allocation range (percent)	IPG proposed allocation (percent)
2000	SDC	60.8–74.5	62.86
	IPG	25.5–39.1	37.14
2001	SDC	72.7–77.0	54.88
	IPG	23.0–27.3	45.12
2002	SDC	61.9–67.5	58.98
	IPG	32.5–38.1	41.02
2003	SDC	67.5–70.5	53.32
	IPG	29.5–32.5	46.68

For the year 2000, the Judges note that the IPG proposal falls within the range the SDC had proposed. There is, therefore, some degree of agreement between the parties as to the appropriate allocation. Accordingly, the Judges find it well within the “zone of reasonableness” to allocate 62.86% of the royalties in the Devotional category to SDC and the remaining 37.14% to IPG.

For the year 2002 (the years 2001 and 2003 will be considered below), a very similar (but not identical) situation exists. The IPG proposal is almost equal to the lower bound of the results of the SDC’s proffered distribution range. Given this near equality, the Judges find

that for the year 2002, again there is some degree of agreement between the parties as to the allocation of royalties. It is well within the “zone of reasonableness” to allocate the royalties in the Devotional category for the year 2002 as follows: 58.98% to SDC and 41.02% to IPG.

For the years 2001 and 2003, there is a marked difference between the percentage allocations proposed by IPG and the percentage allocations set forth in the SDC’s proffered allocations (unsubstantiated in the SDC’s direct case), and, therefore, little agreement between the parties. Given the wide divergence between the competing methodologies, the Judges cannot

reconcile the competing proposals in the same manner as undertaken for the years 2000 and 2002.

Given that the SDC’s application of its methodology was not supported in the SDC’s Direct Case, and that the SDC’s attempt to provide such support in Mr. Whitt’s rebuttal testimony was not timely presented and, therefore, rejected, that methodology cannot serve as any guide-post for the Judges to apply (except, as noted above, to the extent that the allocations proposed by the SDC demonstrate some degree of agreement between the parties). Moreover, since the SDC Methodology cannot be credited, there is no record evidence explaining why the percentage

⁶⁷ One important difference, though, was that the MPAA did not rely on the non-random Kessler

Sample of stations and took steps to mitigate its

impact; the SDC simply utilized the Kessler Sample.

allocations for 2001 and 2003 should be so markedly different in those years compared to 2000 and 2002.

The IPG Methodology, while in evidence, is so flawed that the Judges cannot credit the percentage allocations as proposed. Indeed, in prior determinations, the CRT did not hesitate

to make a “downward adjustment” to a participant’s proposal to reflect “perceived deficiencies in the methodology.” *See, e.g., 1979 Determination*, 47 FR at 9892.

Accordingly, the Judges conclude that the percentage allocations for the years 2001 and 2003 should be set at the

average of the allocations for the years 2000 and 2002. Therefore, the allocations for each of the years 2001 and 2003 shall be 60.92% to SDC and 39.08% to IPG. To summarize, the royalty allocations in the Devotional category for the years 2000 through 2003 shall be:

ALLOCATION IN THE DEVOTIONAL CATEGORY

	2000 (percent)	2001 (percent)	2002 (percent)	2003 (percent)
SDC	62.86	60.92	58.98	60.92
IPG	37.14	39.08	41.02	39.08

V. Conclusion

This Final Determination determines the allocation of cable royalty funds for the years 2000, 2001, 2002, and 2003 in the Program Suppliers and Devotional categories, respectively. The Register of Copyrights may review the Judges’ final determination for legal error in resolving a material issue of substantive copyright law. The Librarian shall cause the Judges’ final determination, and any

correction thereto by the Register, to be published in the **Federal Register** no later than the conclusion of the 60-day review period.

So ordered.

Dated: August 13, 2013.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

Jesse M. Feder,

Copyright Royalty Judge.

David R. Strickler,

Copyright Royalty Judge.

Dated: August 13, 2013.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

Approved by:

James H. Billington,

Librarian of Congress.

Appendix A

The Judges ruled as follows.

CLAIMS DISMISSED AT SHOW CAUSE HEARING

Claimant	Claim Year				Rationale
	2000	2001	2002	2003	
Dreamworks LLC	Dismissed .....	.....	.....	.....	Claimant terminated IPG’s authority effective 12/31/02. Claimant identified in IPG’s petition that was filed after claimant terminated IPG’s authority. MPAA did not include claimant in its petition for 2000.
Litton Syndications	Dismissed .....	.....	.....	.....	Claimant terminated IPG’s authority no later than 5/18/12. Claimant identified in IPG’s petition that was filed after claimant terminated IPG’s authority. MPAA did not include claimant in its petition for 2000.
Marty Stouffer Productions.	Dismissed .....	.....	.....	.....	Claimant alleges termination of IPG authority in July 2002. IPG’s petition that includes claimant was filed after alleged termination. Claimant is not included in MPAA’s petition for 2000.

CLAIMS DISMISSED AT SHOW CAUSE HEARING—Continued

Claimant	Claim Year				Rationale
	2000	2001	2002	2003	
Remodeling Today, Inc. DBA Today's Homeowner.	Dismissed .....	.....	Claimant terminated IPG's authority on 3/1/04. Claimant identified in IPG's petition that was filed after claimant terminated IPG's authority. MPAA did not include claimant in its petition for 2002.
The Television Syndication Company.	Dismissed	Claimant terminated IPG's authority on 4/29/04. Claim for 2003 filed after claimant terminated IPG's authority; no valid claim filed.
Urban Latino TV	Dismissed .....	.....	.....	No claim was filed for 2000. Claimant terminated IPG's authority on 5/28/03. Claimant identified in IPG's petition that was filed after claimant terminated IPG's authority. MPAA did not include claimant in its petition for 2001.

[FR Doc. 2013-25453 Filed 10-29-13; 8:45 am]

BILLING CODE 1410-72-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13-125]

National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board; Meeting**AGENCY:** National Aeronautics and Space Administration (NASA).**ACTION:** Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, and the President's 2004 U.S. Space-Based Positioning, Navigation, and Timing (PNT) Policy, the National Aeronautics and Space Administration (NASA) announces a meeting of the National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board.

DATES: Wednesday, December 4, 2013, 9:00 a.m. to 5:00 p.m.; and Thursday, December 5, 2013, 9:00 a.m. to 12:00 p.m., Local Time.

ADDRESSES: The Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Miller, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-4417, fax (202) 358-2830, or jj.miller@nasa.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

The agenda for the meeting includes the following topics:

- Update on U.S. Space-Based Positioning, Navigation and Timing (PNT) Policy and Global Positioning System (GPS) modernization.
- Explore opportunities for enhancing the interoperability of GPS with other emerging international Global Navigation Satellite Systems (GNSS).
- Examine emerging trends and requirements for PNT services in U.S. and international arenas through PNT Board technical assessments.
- Prioritize current and planned GPS capabilities and services while assessing future PNT architecture options.
- Assess the current and projected economic impact of GPS on the United States, and consider the effects of

potential PNT service degradation if adjacent radio-band spectrum interference is introduced.

Patricia D. Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 2013-25719 Filed 10-29-13; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL COUNCIL ON DISABILITY**Sunshine Act Meeting**

TIME AND DATES: The Members of the National Council on Disability (NCD) will meet in closed executive session by phone on Friday, November 1, from 1:00 p.m.–2:00 p.m., Eastern.

PLACE: The meeting will occur by phone. The meeting will be open only to the NCD Council Members.

STATUS: The meeting on Friday, November 1, from 1:00 p.m. till 2:00 p.m., Eastern will be closed to the public.

MATTERS TO BE CONSIDERED: The Council will meet by phone to discuss matters related solely to internal personnel rules and practices of exigent import, pursuant to paragraph (c)(2) of the Sunshine Act, and in accordance with a

determination made by the NCD Chairperson.

CONTACT PERSON FOR MORE INFORMATION:

Rebecca Cokley, NCD Executive Director, 1331 F Street NW., Suite 850, Washington, DC 20004; 202-272-2004 (V), 202-272-2074 (TTY).

Dated: October 28, 2013.

Rebecca Cokley,
Executive Director.

[FR Doc. 2013-25871 Filed 10-28-13; 11:15 am]

BILLING CODE 6820-MA-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 052-00026; NRC-2008-0252]

Inspections, Tests, Analyses, and Acceptance Criteria; Vogtle Electric Generating Plant, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Determination of inspections, tests, analyses, and acceptance criteria completion.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC), 2.1.03.11 for the Vogtle Electric Generating Plant, Unit 3.

ADDRESSES: Please refer to Docket ID NRC-2008-0252 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2008-0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3442; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The

ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT:

David H. Jaffe, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1439, email: david.jaffe@nrc.gov.

SUPPLEMENTARY INFORMATION:

Licensee Notification of Completion of ITAAC

On August 1, 2013, Southern Nuclear Operating Company, Inc. (the licensee) submitted an ITAAC closure notification (ICN) under § 52.99(c)(1) of Title 10 of the *Code of Federal Regulations* (10 CFR), informing the NRC that the licensee has successfully performed the required inspections, tests, and analyses for ITAAC 2.1.03.11, and that the specified acceptance criteria are met for Vogtle Electric Generating Plant, Unit 3 (ADAMS Accession No. ML13213A155). This ITAAC was approved as part of the issuance of the combined license, NPF-91, for this facility.

NRC Staff Determination of Completion of ITAAC

The NRC staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for Vogtle Electric Generating Plant, Unit 3, ITAAC 2.1.03.11. This notice fulfills the staff's obligations under 10 CFR 52.99(e)(1) to publish a notice in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests and analyses.

The documentation of the NRC staff's determination is in the ITAAC Closure Verification Evaluation Form (VEF), dated September 24, 2013 (ADAMS Accession No. ML13274A279). The VEF is a form that represents the NRC staff's structured process for reviewing ICNs. The ICN presents a narrative description of how the ITAAC was completed, and the NRC's ICN review process involves a determination on whether, among other things, (1) the ICN provides sufficient information, including a summary of the methodology used to perform the ITAAC, to demonstrate that the inspections, tests, and analyses have been successfully completed; (2) the

ICN provides sufficient information to demonstrate that the acceptance criteria are met; and (3) any inspections for the ITAAC have been completed and any ITAAC findings associated with the ITAAC have been closed.

The NRC staff's determination of the successful completion of this ITAAC is based on information available at this time and is subject to the licensee's ability to maintain the condition that the acceptance criteria are met. If new information disputes the NRC staff's determination, this ITAAC will be reopened as necessary. The NRC staff's determination will be used to support a subsequent finding, pursuant to 10 CFR 52.103(g), at the end of construction that all acceptance criteria in the combined license are met. The ITAAC closure process is not finalized for this ITAAC until the NRC makes an affirmative finding under 10 CFR 52.103(g). Any future updates to the status of this ITAAC will be reflected on the NRC's Web site at <http://www.nrc.gov/reactors/new-reactors/oversight/itaac.html>.

Dated at Rockville, Maryland, this 23rd day of October 2013.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013-25815 Filed 10-29-13; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 6, 2013, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, November 6, 2013—12:00 p.m. Until 1:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather

information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301-415-5844 or Email: Quynh.Nguyen@nrc.gov) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146-64147).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: October 22, 2013.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013-25806 Filed 10-29-13; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee On Fukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on

November 5, 2013, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 5, 2013—8:30 a.m. Until 5:00 p.m.

The Subcommittee will review and discuss options for addressing the Near Term Task Force (NTTF) Recommendation 1: Enhanced Regulatory Framework. The Subcommittee will hear presentations by and hold discussions with the NRC staff, the Nuclear Energy Institute, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Michael Snodderly (Telephone 301-415-2241 or Email: Michael.Snodderly@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146-64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: October 22, 2013.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013-25809 Filed 10-29-13; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Evolutionary Power Reactor; Notice of Meeting

The ACRS Subcommittee on U.S. Evolutionary Power Reactor (U.S. EPR) will hold a meeting on November 6, 2013, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed to protection information that is proprietary pursuant to 5 U.S.C. 552(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, November 6, 2013, 8:30 a.m. until 4:45 p.m.

The Subcommittee will review and discuss the Open Items for Chapter 9 and portions of Chapter 2 (Section 2.4) for the Calvert Cliffs Combined License Application (COLA) NRC Safety Evaluation Report (SER) with open items 0. The Subcommittee will hear presentations by and hold discussions with the NRC staff, Unistar Nuclear Operating Services, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kathy Weaver (Telephone 301-415-6236 or Email: Kathy.Weaver@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy

cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012 (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO.

Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: October 22, 2013.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013–25790 Filed 10–29–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on November 7–8, 2013, 11545 Rockville Pike, Rockville, Maryland.

**Thursday November 7, 2013,
Conference Room T2–B1, 11545
Rockville Pike, Rockville, Maryland**

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Safety Evaluation Associated with the Watts Bar, Unit 2, Operating License (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Tennessee Valley Authority regarding the safety evaluation associated with the Watts Bar, Unit 2, operating license.

10:45 a.m.–12:45 p.m.: Near-Term Task Force (NTTF) Recommendation 1: Enhanced Regulatory Framework (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the NTTF Recommendation 1: Enhanced Regulatory Framework.

1:45 p.m.–2:15 p.m.: Assessment of the Quality of Selected NRC Research Projects (Open)—The Committee will hold discussions with members of the ACRS panels performing the quality assessment of the following NRC research projects:

- NUREG/CR–7026: Application of Model Abstraction Techniques to Simulate Transport in Soils
- NUREG–2121: Fuel Fragmentation, Relocation, and Dispersal During the Loss-of-Coolant Accident

2:15 p.m.–3:15 p.m.: Draft Report on the Biennial ACRS Review of the NRC Safety Research Program (Open)—The Committee will discuss the draft report on the biennial ACRS review of the NRC Safety Research Program.

3:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Friday, November 8, 2013, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business including anticipated workload and member assignments.

[**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses

from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

1:00 p.m.–5:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters discussed during this meeting.

5:30 p.m.–6:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion of matters related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: Quynh.Nguyen@nrc.gov), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at pdr.resource@nrc.gov, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System

(PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> or <http://www.nrc.gov/reading-rm/doc-collections/ACRS/>.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301-415-8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: October 24, 2013.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2013-25794 Filed 10-29-13; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: SF-15 Application for 10-Point Veteran Preference

AGENCY: Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces the Office of Personnel Management's (OPM) plan to submit to the Office of Management and Budget (OMB) a request for clearance of a revised information collection, Standard Form (SF) 15, Application for 10-Point Veteran Preference. The SF-15 is used by agencies, OPM examining offices, and agency appointing officials to adjudicate individuals' claims for veterans' preference in accordance with the Veterans' Preference Act of 1944. OPM's revisions will (1) remove obsolete items; and (2) update language as a result of the enactment of the VOW (Veterans Opportunity to Work) to Hire Heroes Act of 2011 (Pub. L. 112-56). The SF-15 will be revised to create a PDF fillable form for applicant use. The only acceptable version of this form will be as stated above, but consistent with current practice, the form may be submitted electronically or in hard

copy. Upon publication, please destroy any prior versions you have in stock. The SF-15 will be obtainable on the OPM Web site at <http://www.opm.gov/forms/standard-forms/>. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until November 29, 2013. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection by mail to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management, by email to oira_submission@omb.eop.gov, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: A copy of this Information Collection Request (ICR), with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to oira_submission@omb.eop.gov or faxed to (202) 395-6974.

Analysis

Agency: Hiring Policy, Office of Personnel Management.

Title: SF-15 Application for 10-Point Veteran Preference.

OMB Number: 3206-0001.

Affected Public: General Public.

Number of Respondents: 22,300 per year.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 3,717 hours per year.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013-25733 Filed 10-29-13; 8:45 am]

BILLING CODE 6325-39-P

OFFICE OF PERSONNEL MANAGEMENT

Hispanic Council on Federal Employment

AGENCY: Office of Personnel Management.

ACTION: Cancelling and Re-Scheduling of Council Meetings.

SUMMARY: The Hispanic Council on Federal Employment (Council) is cancelling the October 31, 2013 Council meeting and will hold its remaining 2013 Council meeting on the date and location shown below. The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Chief of Staff of the Office of Personnel Management and the Chair of the National Hispanic Leadership Agenda (NHLEA).

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at any of the meetings. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: December 12, 2013 from 2:00 p.m.-4:00 p.m.

Location: U.S. Office of Personnel Management, 1900 E St. NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St. NW., Suite 5H35, Washington, DC 20415. Phone (202) 606-0020, FAX (202) 606-2183 or email at veronica.villalobos@opm.gov.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–25724 Filed 10–29–13; 8:45 am]

BILLING CODE 6820–B2–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: New System of Records

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice of a new system of records.

SUMMARY: The U.S. Office of Personnel Management (OPM) proposes to add OPM/Central–19: External Review Records for Multi-State Plan (MSP) Program to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. 5 U.S.C. 552a(e)(4).

DATES: This action will be effective without further notice on December 9, 2013 unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to the Office of Personnel Management, ATTN: Padma Shah, U.S. Office of Personnel Management, 1900 E Street NW., Room 2347, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Padma Shah by telephone at 202–606–2128, or by email at mspp@opm.gov.

SUPPLEMENTARY INFORMATION: The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111–152, was enacted on March 30, 2010 (collectively referred to as “the Affordable Care Act”).

Section 1334 of the Affordable Care Act and its implementing regulations (codified at 45 CFR part 800) direct OPM to establish the Multi-State Plan (MSP) Program to foster competition among plans offering coverage on the individual and small group health insurance markets on the Affordable Insurance Exchanges (referred to as “Exchanges” or “Health Insurance Marketplaces”). Specifically, OPM must contract with private health insurance issuers to offer at least two MSP options on each of the Exchanges in the 50 States and the District of Columbia, in

which issuers may phase in coverage over a period of 4 years.

Under section 1334(a)(4) of the Affordable Care Act, OPM must administer the MSP Program “in a manner similar to the manner in which” it implements the contracting provisions of the Federal Employees Health Benefits (FEHB) Program under 5 U.S.C. 8901 *et seq.* In the MSP Program final rule (78 FR 15560, March 11, 2013), OPM interpreted section 1334(a)(4) of the Affordable Care Act to require implementation of a uniform, nationally applicable external review process for MSP options, consistent with the requirements of section 2719 of the Public Health Service Act and similar to the process administered by OPM under the FEHB Program. This process will ensure that MSP Program contracts are administered consistently throughout all 51 jurisdictions that would be served by an MSP option. Specifically, under 45 CFR 800.503, OPM is authorized to conduct external review of adverse benefit determinations by MSP issuers using a process similar to the FEHB Program disputed claims process. In addition to requests for external review, we anticipate that MSP enrollees may contact OPM about inquiries or complaints regarding MSP options, which may have to be referred to other appropriate entities such as State insurance departments, State consumer assistance programs, and the U.S. Department of Health and Human Services.

The purpose of this system of records is to provide a central database through which OPM may conduct external review of adverse benefit determinations under the MSP Program, refer MSP enrollees to other entities about their inquiries or complaints, and correspond with MSP enrollees. OPM will collect, manage, and analyze health services data that MSP enrollees, MSP issuers, health care providers, and others will furnish through secure data transfer. The information contained in the database will help ensure that (1) MSP enrollees have adequate access to independent review of adverse benefit determinations, (2) MSP enrollees are referred to appropriate entities about their inquiries or complaints, (3) OPM corresponds with MSP enrollees, and (4) OPM collects the information necessary for the enforcement of MSP Program contracts and implementation of the program.

OPM will use identifiable data to create records that are necessary to facilitate external review of MSP issuer adverse benefit determinations by OPM analysts and independent review organizations. Likewise, OPM will use

identifiable data to create records about MSP enrollee inquiries or complaints, which may have to be referred to other State and Federal Government agencies. However, OPM and external analysts using the database for analysis purposes will have access only to de-identified data.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

OPM CENTRAL–19

SYSTEM NAME:

External Review Records for Multi-State Plan (MSP) Program

SYSTEM LOCATION:

Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will contain records on MSP enrollees who request external review of adverse benefit determinations, and MSP enrollees who contact OPM about an inquiry or complaint.

CATEGORIES OF RECORDS IN THE SYSTEM:

In order to process a request for external review, OPM may require an MSP enrollee or an authorized representative to submit the following information about the enrollee, which OPM may also collect, as necessary, to process enrollee inquiries and complaints:

- a. The adverse benefit determination that the individual received from the MSP issuer.
- b. Name.
- c. Date of birth.
- d. Gender.
- e. Social Security Number.
- f. Phone number(s), postal address(es) (current and mailing), and email address(es).
- g. Insurance identification (ID) number.
- h. Group number.
- i. Scanned copy of insurance ID card.
- j. The State and county of coverage.
- k. An indication of whether the external review request is for an urgent claim.
- l. A brief statement of the reason for the external review request.
- m. The MSP issuer's name.
- n. The name of the MSP option that covers the MSP enrollee.
- o. The claim number.
- p. Subscriber's information: Name, Social Security Number, date of birth, gender, phone number(s), postal address(es) (current and mailing), and email address(es).

q. In cases where an authorized representative requests external review, evidence of authorization and the following information about the authorized representative: name, phone number(s), postal address(es) (current and mailing), and email address(es).

r. Name of health care provider.

s. Health care provider address(es).

t. Any additional information necessary to process the request for external review.

In addition, MSP enrollees may choose to submit additional information that will become part of the system of records. This information may include, but is not limited to, the following:

a. A statement about why the MSP enrollee believes the MSP issuer's adverse benefit determination was wrong, based on specific benefit provisions in the plan brochure, contract, or statement of benefits.

b. Copies of documents that support the request for external review, such as physicians' letters, operative reports, bills, medical records, and explanation of benefits (EOB) forms.

c. Copies of all letters the MSP enrollee sent to the MSP issuer about the claim.

d. Copies of all letters the MSP issuer sent to the MSP enrollee about the claim.

MSP issuers will provide additional information and documentation. Consequently, the records in the system may include the following information about the MSP enrollee:

a. Personal identifying information (name, Social Security Number, date of birth, gender, phone number, etc.).

b. Postal address(es) (current and mailing).

c. Dependent information (spouse, dependents and their addresses).

d. Employment information.

e. Health care provider information.

f. Health care coverage information.

g. Health care procedure information.

h. Health care diagnoses information.

i. Provider charges and reimbursement information on coverage, procedures and diagnoses.

j. Any other letters or other documents submitted in connection with the adverse benefit determination by MSP enrollees, health care providers, or MSP issuers.

The aforementioned information may also be collected, as necessary, to process MSP enrollee inquiries and complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

OPM has authority to administer the MSP Program under section 1334 of the Affordable Care Act (42 U.S.C. 18054).

PURPOSE:

OPM operates this system of records to support the administration of the MSP Program. The primary purpose of this system of records is to aid in the administration of external review of adverse benefit determinations for MSP enrollees. OPM must have the capacity to collect, manage, and access health insurance benefits appeals information and documents on an ongoing basis in order for OPM to:

a. Determine eligibility for the MSP Program external review process.

b. Review adverse benefit determinations by MSP issuers to provide effective external review.

c. Track the progress of individual requests for external review and ensure that MSP enrollees do not submit duplicative requests.

d. Make information available for any subsequent litigation related to a disputed external review decision.

e. Monitor whether MSP issuers are providing benefits to which MSP enrollees are entitled under the terms of the applicable MSP Program contract.

f. Maintain records for parties to the dispute so that the MSP enrollee and MSP issuer can obtain a record of past external reviews in which they were involved.

g. Track and report information about the administration of the MSP Program.

h. Refer MSP enrollees to appropriate entities about their inquiries or complaints.

i. Correspond with MSP enrollees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures otherwise permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system may be disclosed outside of OPM, for a routine use under 5 U.S.C. 552a(b)(3) as follows:

a. For Claims Adjudication—To disclose information to agency contractors conducting claim reviews for the purpose of adjudicating an appeal.

b. For Law Enforcement Purposes—To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OPM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. For Congressional Inquiry—To provide information to a Congressional office from the record of an individual in response to an inquiry from that

Congressional office made at the request of that individual.

d. For Judicial/Administrative Proceedings—To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the processing, records may be disclosed if a subpoena has been signed by a judge.

e. For the National Archives and Records Administration or the General Services Administration—To disclose information to the National Archives and Records Administration (NARA) or General Services Administration for use in records management inspections conducted pursuant to 44 U.S.C. 2904 and 2906.

f. For Litigation—To disclose to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which OPM is authorized to appear, when—

(1) OPM, or any component thereof; or

(2) Any employee of OPM in his or her official capacity; or

(3) Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or

(4) The United States, when OPM determines that litigation is likely to affect OPM or any of its components—

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OPM is deemed by OPM to be relevant and necessary to the litigation, provided, however, that the disclosure is compatible with the purpose for which records were collected.

g. For Non-Federal Personnel—To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government, where the disclosure is compatible with the purpose for which records are collected.

h. In the Event of a Data Breach—In the event of a data breach, records may be disclosed to appropriate Federal agencies and agency contractors that have a need to know the information for the purpose of assisting the agency's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

i. To researchers inside and outside the Federal Government, approved in advance by OPM on the basis of demonstrated aptitude and a written research plan, for the purpose of conducting analysis of health care and health insurance trends and topical health-related issues compatible with the purposes for which the records were collected and formulating health care program changes and enhancements to limit cost growth, improve outcomes, increase accountability, and improve efficiency in program administration. In all cases, researchers external to OPM will access a public use file that will be maintained for such purposes; will contain only de-identified data; and will be structured, where appropriate, to protect MSP enrollee confidentiality where identities may be discerned because there are fewer records under certain demographic or other variables. In all disclosures to analysts under this routine use, only de-identified data will be disclosed.

j. If OPM determines that jurisdiction over an MSP enrollee's inquiry or complaint lies with another Federal or State agency, information in this system of records may be disclosed to other agencies, such as a State insurance department, a State Consumer Assistance Program, or the U.S. Department of Health and Human Services.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records will be maintained in locked file cabinets within OPM and/or any contractors. Any electronic records will be maintained in electronic systems.

RETRIEVABILITY:

Records will primarily be manipulated, managed and summarized using a unique number assigned to each external review or case about an inquiry or complaint. However, information may also be accessible by other identifying information, including name, date of birth, or Social Security Number.

SAFEGUARDS:

OPM will maintain records within its secure headquarters in Washington, DC. Electronic records will be maintained on password-protected computers and systems. Computer firewalls will be maintained to prevent access by unauthorized personnel. Any paper records will be delivered to a locked P.O. Box and kept in locked file cabinets.

Federal employees and employees of Federal contractors are required to have been the subject of a favorable adjudication following an appropriate background investigation before they are allowed physical access to OPM and access to any records. OPM's environment is equipped with electronic badge readers restricting access to authorized personnel only and has safeguards in place to alert security personnel if unauthorized personnel attempt to gain access to OPM's environment. OPM employs armed physical security guards 365 days a year, 24 hours a day, who patrol OPM headquarters, including entry and exit points. Closed Circuit Video cameras are strategically located on every floor and external to the facility.

The system will employ National Institute of Standards and Technology (NIST) Security Controls identified in the most recent version of Special Publication SP 800-53. NIST 800-53 security controls are the management, operational, and technical safeguards or countermeasures employed within an organizational information system to protect the confidentiality, integrity, and availability of the system and its information. OPM will perform a Security Assessment and Authorization (SA&A) following the NIST 800-53 standard in order to obtain an Authority to Operate (ATO). The system will employ role-based access controls to further restrict access to data, based on the functions that users are authorized to perform. The system will be fully compliant with all applicable provisions of the Privacy Act, Health Insurance Portability and Accountability Act (HIPAA), Federal Information Security Management Act (FISMA), Federal Records Act, Office of Management and Budget (OMB) guidance, and NIST guidance.

RETENTION AND DISPOSAL:

The records in this system will be retained for at least 6 years. Records may be retained for a longer period for the system purposes established in this system of records notice, or for other purposes as required under law (e.g., for purposes of litigation). A records retention schedule will be established with NARA, and no records will be destroyed until that schedule has been established. Once that schedule is established, it will set forth methods for disposing records that would no longer be eligible for retention.

SYSTEM MANAGERS AND ADDRESSES:

The system manager is Edward M. DeHarde, U.S. Office of Personnel Management, Healthcare and Insurance,

1900 E Street NW., Room 2347, Washington, DC 20415.

NOTIFICATION AND RECORD ACCESS PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to the U.S. Office of Personnel Management, FOIA/PA Requester Service Center, 1900 E Street NW., Room 5415, Washington, DC 20415-7900 or by emailing foia@opm.gov.

Individuals must furnish the following information for their records to be located:

1. Full name.
2. Date and place of birth.
3. Social Security Number.
4. Signature.
5. Available information regarding the type of information requested, including the name of the MSP issuer involved in any external review and the approximate date of the request for external review.
6. The reason why the individual believes this system contains information about him/her.
7. The address to which the information should be sent.

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297). In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

- If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]. [Signature]."
- If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature]."

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of records about them should write to the U.S. Office of Personnel Management, FOIA/PA Requester Service Center, 1900 E Street NW., Room 5415, Washington, DC 20415-7900. ATTN: Healthcare and Insurance, National Healthcare Operations.

Individuals must furnish the following information in writing for their records to be located:

1. Full name.
2. Date and place of birth.
3. Social Security Number.
4. Signature.

5. Available information regarding the type of information that the individual seeks to have amended, including the name of the MSP issuer involved in any external review and the approximate date of the request for external review.

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297). In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

- If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]. [Signature]."
- If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature]."

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

- a. MSP enrollees who request external review, or who contact OPM about an inquiry or complaint.
- b. Authorized representatives of MSP enrollees.
- c. Health care providers.
- d. MSP issuers.
- e. Medical professionals providing expert medical review under contract with OPM.

SYSTEM EXEMPTIONS:

None.

[FR Doc. 2013-25725 Filed 10-29-13; 8:45 am]

BILLING CODE 6325-38-P

POSTAL REGULATORY COMMISSION

[Docket No. MC2014-3 and CP2014-3; Order No. 1860]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express & Priority Mail Contract 15 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 31, 2013.

ADDRESSES: Submit comments electronically via the Commission's

Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Notice of Filings
- III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Express & Priority Mail Contract 15 to the competitive product list.¹ The Postal Service asserts that Priority Mail Express & Priority Mail Contract 15 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2014-3.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2014-3.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11-6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Brian Code, Manager,

¹ Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 15 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 23, 2013 (Request).

Retail Alliances, asserts that the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Code contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective within 90 days after the Postal Service receives final regulatory approval from the Commission. *Id.* at 3. The contract will expire one year from the effective date. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment E.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2014-3 and CP2014-3 to consider the Request pertaining to the proposed Priority Mail Express & Priority Mail Contract 15 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 31, 2013. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2014-3 and CP2014-3 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 31, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,
Secretary.

[FR Doc. 2013-25667 Filed 10-29-13; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2014-4 and CP2014-4;
Order No. 1861]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings requesting the addition of Parcel Return Service Contract 5 to the competitive product list. This notice informs the public of the filings, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 31, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Notice of Filings
- III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a request and associated supporting information to add Parcel Return Service Contract 5 to the competitive product list.¹ It is the

successor agreement to the contract approved in Docket Nos. MC2011-6 and CP2011-33.² Request at 1. The Postal Service asserts that Parcel Return Service Contract 5 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). *Id.* The Request has been assigned Docket No. MC2014-4.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2014-4.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11-6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.* *Related contract.* The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective one business day after the Commission issues all necessary regulatory approval. *Id.* at 8. The contract will expire three years from the effective date unless, among other things, early termination is mutually agreed upon in writing. *Id.* The contract also allows two 90-day

Contract, and Supporting Data, October 23, 2013 (Request).

² See Docket Nos. MC2011-6 and CP2011-33, Order No. 602, Order Approving Parcel Return Service Contract 2 Negotiated Service Agreement, December 2, 2010; see also Docket Nos. MC2011-6 and CP2011-33, Order No. 1857, Order Granting Temporary Relief, October 23, 2013.

extensions of the agreement if the preparation of a successor agreement is active and the Commission is notified.³ The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a).⁴

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2014-4 and CP2014-4 to consider the Request pertaining to the proposed Parcel Return Service Contract 5 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR Part 3020, subpart B. Comments are due no later than October 31, 2013. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2014-4 and CP2014-4 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed

³ *Id.* Previously, the Postal Service clarified that identical language in Priority Mail Contract 60 "contemplates the Postal Service filing any notices of extension with the Commission at least one week prior to the 3-year expiration date or the extended expiration date." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; see also Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.

⁴ Although the Request appears to state that the certification only pertains to paragraphs (1) and (3) of 39 U.S.C. 3633(a), the certification itself contains an assertion that the prices are in compliance with 39 U.S.C. 3633(a)(1), (2), and (3). See Request at 2; Attachment E.

¹ Request of the United States Postal Service to Add Parcel Return Service Contract 5 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision,

to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 31, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013-25666 Filed 10-29-13; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2014-2 and CP2014-2;
Order No. 1859]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings requesting the addition of Priority Mail Contract 66 to the competitive product list. This notice informs the public of the filings, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 31, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Notice of Filings
- III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a request and associated supporting information to add Priority Mail Contract 66 to the competitive product list.¹ It is the successor agreement to the contract approved in Docket Nos. MC2010-32 and CP2010-

77.² Request at 1. The Postal Service asserts that Priority Mail Contract 66 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). *Id.* The Request has been assigned Docket No. MC2014-2.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2014-2.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11-6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective one business day after the Commission issues all necessary regulatory approval. *Id.* at 2. The contract will expire three years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The contract also allows two 90-day extensions of the agreement if the preparation of a successor agreement is active and the Commission is notified within 7 days of the contract's expiration. *Id.* The Postal Service

represents that the contract is consistent with 39 U.S.C. 3633(a).³

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2014-2 and CP2014-2 to consider the Request pertaining to the proposed Priority Mail Contract 66 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 31, 2013. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Pamela A. Thompson to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2014-2 and CP2014-2 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 31, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

³ Although the Request appears to state that the certification only pertains to paragraphs (1) and (3) of 39 U.S.C. 3633(a), the certification itself contains an assertion that the prices are in compliance with 39 U.S.C. 3633(a)(1), (2), and (3). See Request at 2; Attachment E.

¹ Request of the United States Postal Service to Add Priority Mail Contract 66 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 23, 2013 (Request).

² See Docket Nos. MC2010-32 and CP2010-77, Order No. 510, Order Approving Priority Mail Contract 27 Negotiated Service Agreement, August 6, 2010.

By the Commission.

Shoshana M. Grove,
Secretary.

[FR Doc. 2013-25665 Filed 10-29-13; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30763; 812-14200]

VTL Associates, LLC, et al.; Notice of Application

October 24, 2013.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(j) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: VTL Associates, LLC ("VTL"), RevenueShares ETF Trust (the "Trust"), and Foreside Fund Services, LLC (the "Distributor").

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: Filing Dates: The application was filed on August 12, 2013 and amended on October 18, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving

applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 18, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: VTL and the Trust: Vincent T. Lowry, VTL Associates, LLC, One Commerce Square, 2005 Market Street, Suite 2020, Philadelphia, PA 19103; Distributor: Foreside Fund Services, LLC, Three Canal Plaza, Suite 100, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551-6876 or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. The Trust initially will offer one series, the RevenueShares Active Navellier Overall A-100 Fund (the "Initial Fund"), which applicants state will seek long-term capital growth. The Initial Fund will seek to achieve its investment objective by investing primarily in equity securities listed on North American exchanges.

2. VTL, a Pennsylvania limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will serve as investment adviser to the Initial Fund. The Advisor (as defined below) may in the future retain one or more sub-advisors (each a "Sub-Advisor") to manage the portfolios of the Funds (as defined below). Any Sub-Advisor will be registered, or not subject to registration, under the Advisers Act.

The Distributor is a registered broker-dealer ("Broker") under the Securities Exchange Act of 1934 ("Exchange Act") and will act as the distributor and principal underwriter of the Funds.

3. Applicants request that the order apply to the Initial Fund and any future series of the Trust as well as other open-end management companies that may utilize active management investment strategies ("Future Funds"). Any Future Fund will (a) be advised by VTL or an entity controlling, controlled by, or under common control with VTL (VTL and each such other entity and any successor thereto included in the term "Advisor"),¹ and (b) comply with the terms and conditions of the application.² The Initial Fund and Future Funds together are the "Funds".³ Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies traded in the U.S. and/or non-U.S. markets, and derivatives, other assets, and other investment positions ("Portfolio Instruments").⁴ Funds may invest in "Depository Receipts".⁵ Each Fund will operate as an actively managed exchange-traded fund ("ETF").

4. Applicants also request that any exemption under section 12(d)(1)(j) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund that is currently or subsequently part of the same "group of investment companies" as the Initial Fund within the meaning

¹ For the purposes of the requested order, a "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

² Any Advisor to a Future Fund will be registered as an investment adviser under the Advisers Act. All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

³ Applicants further request that the order apply to any future distributor and principal underwriter of the Funds (included in the term "Distributor"), which would be a registered broker-dealer under the Exchange Act and would comply with the terms and conditions of the Application. The Distributor of any Fund may be an affiliated person of the Advisor and/or Sub-Advisors.

⁴ If a Fund invests in derivatives, then (a) the board of trustees ("Board") of the Fund will periodically review and approve the Fund's use of derivatives and how the Fund's investment adviser assesses and manages risk with respect to the Fund's use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

⁵ Depository Receipts are typically issued by a financial institution, a "depository", and evidence ownership in a security or pool of securities that have been deposited with the depository. A Fund will not invest in any Depository Receipts that the Advisor or any Sub-Advisor deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants, any Future Fund, any Advisor, or any Sub-Advisor will serve as the depository bank for any Depository Receipts held by a Fund.

of section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any Brokers selling Shares of a Fund to an Investing Fund (as defined below); and (iv) each management investment company or unit investment trust registered under the Act that is not part of the same "group of investment companies" as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies, "Investing Management Companies," such unit investment trusts, "Investing Trusts," and Investing Management Companies and Investing Trusts together, "Investing Funds"). Investing Funds do not include the Funds.⁶

5. Applicants anticipate that a Creation Unit will consist of at least 50,000 Shares. Applicants anticipate that the trading price of a Share will range from \$10 to \$100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund ("Authorized Participant") with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) A Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC"), a clearing agency registered with the Commission and affiliated with the Depository Trust Company ("DTC"), or (b) a participant in the DTC (such participant, "DTC Participant").

6. In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments").⁷ On any given Business

Day⁸ the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the "Creation Basket." In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),⁹ except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;¹⁰ or (c) TBA Transactions,¹¹ short positions and other positions that cannot be transferred in kind¹² will be excluded from the Creation Basket.¹³ If there is a difference between NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Cash Amount").

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as

restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

⁸ Each Fund will sell and redeem Creation Units on any day the Fund is open, including as required by section 22(e) of the Act (each, a "Business Day").

⁹ The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value ("NAV") for that Business Day.

¹⁰ A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

¹¹ A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

¹² This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

¹³ Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Funds holding non-U.S. investment ("Global Funds"), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.¹⁴

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act ("Stock Exchange"), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

9. A Fund may recoup the settlement costs charged by NSCC and DTC by imposing a transaction fee on investors purchasing or redeeming Creation Units (the "Transaction Fee"). The Transaction Fee will be borne only by purchasers and redeemers of Creation Units and will be limited to amounts that have been determined appropriate

⁶ An Investing Fund may rely on the order only to invest in Funds and not in any other registered investment company.

⁷ The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act"). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are

¹⁴ A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

by the Advisor to defray the transaction expenses that will be incurred by a Fund when an investor purchases or redeems Creation Units.¹⁵ All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus ("Prospectus") to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

10. Shares will be listed and traded at negotiated prices on a Stock Exchange and traded in the secondary market. Applicants expect that Stock Exchange specialists or market makers ("Market Makers") will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.¹⁶ Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.¹⁷ Applicants expect that

arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant.

13. Neither the Trust nor any Fund will be marketed or otherwise held out as a "mutual fund". Instead, each Fund will be marketed as an "actively-managed exchange-traded fund". In any advertising material where features of obtaining, buying or selling Shares traded on the Stock Exchange are described there will be an appropriate statement to the effect that Shares are not individually redeemable.

14. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include a Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.¹⁸

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

¹⁸ Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, each Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for its NAV calculation at the end of such Business Day.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c-1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-

¹⁵ Where a Fund permits an in-kind purchaser to deposit cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. In all cases, the Transaction Fee will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

¹⁶ If Shares are listed on The NASDAQ Stock Market LLC ("Nasdaq") or a similar electronic Stock Exchange (including NYSE Arca), one or more member firms of that Stock Exchange will act as Market Maker and maintain a market for Shares trading on that Stock Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares as discussed below.

¹⁷ Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares.

1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act.

Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) Prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants

observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.¹⁹

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state each Global Fund's statement of additional information ("SAI") will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other

investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(1)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company ("Investing Fund Advisor"), sponsor of an Investing Trust ("Sponsor"), any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor ("Investing Fund's Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company ("Investing Fund Sub-Advisor"), any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Advisor or any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor

¹⁹ Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that it may otherwise have under rule 15c6-1 under the Exchange Act. Rule 15c6-1 requires that most securities transactions be settled within three business days of the trade date.

(“Investing Fund’s Sub-Advisory Group”).

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate²⁰ (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (“Affiliated Underwriting”). An “Underwriting Affiliate” is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not “interested persons” within the meaning of section 2(a)(19) of the Act (“disinterested directors or trustees”), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.²¹

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company

relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (“FOF Participation Agreement”). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (“second tier affiliate”), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines “affiliated person” to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines “control” as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person’s voting securities. Each Fund may be deemed to be controlled by an Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Advisor (an “Affiliated Fund”).

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more

Affiliated Funds.²² Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or second-tier affiliates.²³

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund’s Portfolio Instruments. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds, and the valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner and on the same terms for all, regardless of the identity of the purchaser or redeemer. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund’s registration statement.²⁴ The

²² Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

²³ To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. The requested relief is intended to cover, however, transactions directly between an Investing Fund and a Fund.

²⁴ Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund,

Continued

²⁰ An “Investing Fund Affiliate” is any Investing Fund Advisor, Investing Fund Sub-Advisor, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. “Fund Affiliate” is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

²¹ Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Advisor or any Sub-Advisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective

date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Advisor or a person controlling, controlled by or under common control with the Investing Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Advisor and any Investing Fund Sub-Advisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the independent directors or trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the

Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Advisor will waive fees otherwise payable to the Investing Fund Sub-Advisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Advisor, or an affiliated person of the Investing Fund Sub-Advisor, other than any advisory fees paid to the Investing Fund Sub-Advisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Advisor. In the event that the Investing Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than

may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and

Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70752; File No. SR-CBOE-2013-099]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Extending the FLEX Exercise Settlement Values Pilot

October 24, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 11, 2013, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Flexible Exchange Options (“FLEX Options”) pilot program regarding permissible exercise settlement values for FLEX Index Options.⁵ The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. See CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote (“RFQ”) System platform are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are contained in Chapter XXIVB.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 28, 2010, the Exchange received approval of a rule change that, among other things, established a pilot program regarding permissible exercise settlement values for FLEX Index Options. The pilot program is currently set to expire on the earlier of November 2, 2013 or the date on which the pilot program is approved on a permanent basis.⁶ The purpose of this rule change filing is to extend the pilot program through the earlier of November 3, 2014 or the date on which the pilot program is approved on a permanent basis. This filing simply seeks to extend the operation of the pilot program and does not propose any substantive changes to the pilot program.

Under Rules 24A.4, *Terms of FLEX Options*, and 24B.4, *Terms of FLEX Options*, a FLEX Option may expire on any business day specified as to day, month and year, not to exceed a maximum term of fifteen years. In addition, the exercise settlement value for a FLEX Index Option can be specified as the index value determined by reference to the reported level of the index as derived from the opening or closing prices of the component securities ("a.m. settlement" or "p.m. settlement," respectively) or as a specified average, provided that the average index value must conform to the averaging parameters established by the Exchange.⁷ However, prior to the

initiation of the exercise settlement values pilot, only a.m. settlements were permitted if a FLEX Index Option expires on, or within two business days of, a third Friday-of-the-month expiration ("Expiration Friday").⁸

Under the exercise settlement values pilot, this restriction on p.m. and specified average price settlements in FLEX Index Options was eliminated.⁹ The exercise settlement values pilot is currently set to expire on the earlier of November 2, 2013 or the date on which the pilot program is approved on a permanent basis.

CBOE is proposing to extend the pilot program through the earlier of November 3, 2014 or the date on which the pilot program is approved on a permanent basis. CBOE believes the pilot program has been successful and well received by its membership and the investing public for the period that it has been in operation as a pilot. In support of the proposed extension of the pilot program, and as required by the pilot program's Approval Order, the Exchange has submitted to the Commission pilot program reports regarding the pilot, which detail the Exchange's experience with the program. Specifically, the Exchange provided the Commission an annual report analyzing volume and open interest for each broad-based FLEX Index Options class overlying an Expiration Friday, p.m.-settled FLEX

Index Options series.¹⁰ The annual report also contained information and analysis of FLEX Index Options trading patterns. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open interest. In providing the pilot reports to the Commission, the Exchange has requested confidential treatment of the pilot reports under the Freedom of Information Act ("FOIA").¹¹ The confidentiality of the pilot reports is subject to the provisions of FOIA.

The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement (as discussed below).

In that regard, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, CBOE continues to believe that the restrictions on exercise settlement values are no longer necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.¹² To the contrary,

¹⁰ The annual report also contained certain pilot period and pre-pilot period analyses of volume and open interest for Expiration Friday, a.m.-settled FLEX Index series and Expiration Friday Non-FLEX Index series overlying the same index as an Expiration Friday, p.m.-settled FLEX Index option.

¹¹ 5 U.S.C. 552.

¹² In further support, the Exchange also notes that the p.m. and specified average price settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, Expiration Friday. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates (or on the expiration dates addressed under the pilot program). The Exchange is also not aware of any market disruptions or problems caused by the use of customized options in the OTC markets that expire on or near Expiration Friday and have a p.m. or specified average exercise settlement value. In addition, the Exchange believes the reasons for limiting expirations to a.m. settlement, which is something the SEC has imposed since the early 1990s for Non-FLEX Options, revolved around a concern about expiration pressure on the New York Stock Exchange ("NYSE") at the close that are no longer relevant in today's market. Today, however, the Exchange believes stock exchanges are much better able to handle volume. There are multiple primary listing and unlisted trading privilege ("UTP") markets, and trading is dispersed among several exchanges and alternative trading systems. In addition, the Exchange believes that surveillance

⁶ At the same time the permissible exercise settlement values pilot was established for FLEX Index Options, the Exchange also established a pilot program eliminating the minimum value size requirements for all FLEX Options. *See* Securities Exchange Act Release Nos. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087) (Approval Order); 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR-CBOE-2010-026) (technical rule change to include original pilots' conclusion date of March 28, 2011 in the rule text); 64110 (March 24, 2011), 76 FR 17463 (March 29, 2011) (SR-CBOE-2011-024) (extending the pilots through March 30, 2012), 77 FR 20673 (April 5, 2012) (SR-CBOE-2012-027) (extending the pilots through the earlier of November 2, 2012 or the date on which the respective pilot program is approved on a permanent basis). The pilot program eliminating the minimum value size requirements was approved on a permanent basis in a separate rule change filing. *See* Securities Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR-CBOE-2012-040). The permissible exercise settlement values pilot, however, has been extended. *See* Securities Exchange Act Release No. 68145 (November 2, 2012), 77 FR 67044 (November 8, 2012) (SR-CBOE-2012-102) (extending the pilot through the earlier of November 2, 2013 or the date on which the pilot program is approved on a permanent basis).

⁷ *See* Rules 24A.4(b)(3) and 24B.4(b)(3); *see also* Securities Exchange Act Release No. 31920

(February 24, 1993), 58 FR 12280 (March 3, 1993) (SR-CBOE-92-17). The Exchange has determined to limit the averaging parameters to three alternatives: the average of the opening and closing index values on the expiration date; the average of intra-day high and low index values on the expiration date; and the average of the opening, closing, and intra-day high and low index values on the expiration date. Any changes to the averaging parameters established by the Exchange would be announced to Trading Permit Holders via circular. The Commission notes that its initial approval of specified average exercise settlement values for FLEX Index Options that expire on, or within two business days of, a third Friday-of-the-month expiration was based on the averaging parameters being limited to these three alternatives. *See* Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831, 5832 n.17 (February 4, 2010). The Commission expects that, if the Exchange were to seek to change these averaging parameters, it would file a proposed rule change pursuant to Section 19(b) under the Act. *See* Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591, 8593 n.21 (February 25, 2009).

⁸ For example, prior to the pilot, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before Expiration Friday could have an a.m., p.m. or specified average settlement. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before Expiration Friday could only have an a.m. settlement.

⁹ No change was necessary or requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

CBOE believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

The Exchange also notes that certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Index Options in accordance with Rules 24A.7, *Position Limits and Reporting Requirements*, 24A.8, *Exercise Limits*, 24B.7, *Position Limits and Reporting Requirements*, and 24B.8, *Exercise Limits*. Additionally, all FLEX Options remain subject to the position reporting requirements in paragraph (a) of CBOE Rule 4.13, *Reports Related to Position Limits*.¹³ Moreover, the Exchange and its Trading Permit Holder organizations each have the authority, pursuant to CBOE Rule 12.10, *Margin Required is Minimum*, to impose

techniques are much more robust and automated. In the early 1990s, it was also thought by some that opening procedures allow more time to attract contra-side interest to reduce imbalances. The Exchange believes, however, that today order flow is predominantly electronic and the ability to smooth out openings and closes is greatly reduced (e.g., market-on-close procedures work just as well as openings). Also other markets, such as the NASDAQ Stock Exchange, do not have the same type of pre-opening imbalance disseminations as the NYSE, so many stocks are not subject to the same procedures on Expiration Friday. In addition, the Exchange believes that the NYSE has reduced the required time a specialist has to wait after disseminating a pre-opening indication. So, in this respect, the Exchange believes there is less time to react in the opening than in the close. Moreover, to the extent there may be a risk of adverse market effects attributable to p.m. settled options (or certain average price settled options related to the closing price) that would otherwise be traded in a non-transparent fashion in the OTC market, the Exchange continues to believe that such risk would be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, liquidity, and financial stability available.

¹³ CBOE Rule 4.13(a) provides that "[i]n a manner and form prescribed by the Exchange, each Trading Permit Holder shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The report shall indicate for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered." For purposes of this Rule, the term "customer" in respect of any Trading Permit Holder includes "the Trading Permit Holder, any general or special partner of the Trading Permit Holder, any officer or director of the Trading Permit Holder, or any participant, as such, in any joint, group or syndicate account with the Trading Permit Holder or with any partner, officer or director thereof." Rule 4.13(d).

additional margin as deemed advisable. CBOE continues to believe these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement.

CBOE is also cognizant of the OTC market, in which similar restrictions on exercise settlement values do not apply. CBOE continues to believe that the pilot program is appropriate and reasonable and provides market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE continues to believe that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

If, in the future, the Exchange proposes an additional extension of the pilot program, or should the Exchange propose to make the pilot program permanent (which the Exchange currently intends to do), the Exchange will submit, along with any filing proposing such amendments to the pilot program, an additional pilot program report covering the extended period during which the pilot program was in effect and including the details referenced above and consistent with the pilot program's Approval Order. The pilot program report would be submitted to the Commission at least two months prior to the new expiration date of the pilot program. The Exchange will also continue, on a periodic basis, to submit interim reports of volume and open interest consistent with the terms of the exercise settlement values pilot program as described in the pilot program's Approval Order. All such pilot reports would continue to be provided by the Exchange along with a request for confidential treatment under FOIA.¹⁴ As noted in the pilot program's Approval Order, any positions established under the pilot program

¹⁴ See, note 11, *supra*, and surrounding discussion. If the Exchange seeks permanent approval of the pilot program, the Exchange recognizes that certain information in the pilot reports may need to be made available on a public basis.

would not be impacted by the expiration of the pilot program.¹⁵

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the pilot program, which permits additional exercise settlement values, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange believes that it has not experienced any adverse effects from the operation of the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement. The Exchange also believes that the extension of the exercise settlement values pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, market

¹⁵ For example, a position in a pm-settled FLEX Index Option series that expires on Expiration Friday in January 2015 could be established during the exercise settlement values pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. See Approval Order, *supra* note 6, footnotes 9 and 10.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ *Id.*

impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would continue to provide Trading Permit Holders and investors with additional opportunities to trade customized options in an exchange environment (which offers the added benefits of transparency, price discovery, liquidity, and financial stability as compared to the over-the-counter market) and subject to exchange-based rules, and investors would benefit as a result.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-Flex expirations and use a p.m. settlement. CBOE believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability. Therefore, the Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become

operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that waiving the 30-day operative delay would prevent the expiration of the pilot program on November 2, 2013, prior to the extension of the pilot program becoming operative. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-099 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number *SR-CBOE-2013-099*. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR-CBOE-2013-099* and should be submitted on or before November 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Kevin M. O'Neill,
Deputy Secretary.

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BILLING CODE 8011-01-P

²⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70753; File No. SR-OCC-2013-17]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Charters for the Board of Directors, the Membership/Risk Committee, the Audit Committee and the Performance Committee

October 24, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on October 17, 2013, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change concerns the charters of OCC’s Board of Directors (“Board Charter”) and the Membership/Risk Committee (“MRC Charter”), Audit Committee (“AC Charter”) and Performance Committee (“PC Charter”) of OCC’s Board of Directors (collectively, the “Committee Charters”).³

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose of the Proposed Rule Change

This proposed rule change concerns the Board, Membership/Risk Committee (“MRC”), Audit Committee (“AC”) and Performance Committee (“PC”) Charters.

Board of Directors Charter

The introduction of the Board Charter reconfirms that oversight of the management of the business and affairs of OCC is generally vested in the Board. OCC has not previously adopted a charter for its Board of Directors (“Board”) because OCC’s By-Laws and Rules provide the framework within which the respective responsibilities of OCC’s Board and management have been defined. The Board Charter does not impose any new responsibilities on the Board, but rather reflects the longstanding powers and duties of the Board, as well as underlying practices that have been developed to aid the Board in meeting its obligations. The Board’s adoption of a Charter at this time reflects a desire to increase the transparency of the Board’s oversight activities for parties outside of OCC, promote accountability, and to align with corporate governance best practices.

The Board Charter would also acknowledge certain parameters applicable to the membership in and organization of the Board, many of which are separately provided for in OCC’s By-Laws.⁴ The Board Charter would reflect that the size and composition of the Board and qualification standards used in the selection of Directors would be consistent with the corresponding terms of the By-Laws. Actions concerning the election, resignation, and disqualification of Directors, and with respect to the tenure of service of each category of Director, would be required to be taken in accordance with the By-Laws. The Management Director⁵ and

Exchange Directors would be required to be elected at each annual stockholder meeting and term limits and the absence of age limits for Directors would be addressed along with responsibilities of any Management or Member Vice Chairman.

The Board Charter would address certain aspects of the membership and organization of the Board with respect to meetings. The Board would meet a minimum of five times each year with special meetings called pursuant to the By-Laws.⁶ Expectations concerning participation in meetings by Directors would be set out and the Chairman of the Board would be required to set the agenda in consultation with the President and the Secretary.

The Board Charter would provide that the Board is authorized to make inquiries as it deems appropriate in the execution of its duties and may confer with OCC management or employees.⁷ The Board would elect certain corporate officers annually, as provided for in the By-Laws.

The Board would be permitted to form such committees and subcommittees as it deems appropriate and delegate authority to committee members.⁸ Chairs of the Board committees would be determined in accordance with the terms of the applicable committee charter and any applicable provisions of the By-Laws. Committee assignments would be annually reviewed and approved by the Board subject to the By-Laws. Consistent with the requirements applicable to the Directors serving on the Board, Directors on Board committees would be expected to meet certain standards of preparation and participation.

As a more detailed expression of the Board’s responsibility to act as a steward of OCC and ensure it has the critical capabilities to achieve its obligations in a safe, sound, efficient and prudential manner, the Board Charter would identify specific

Chairman and the President will be elected as Management Directors by the stockholders at each annual stockholder meeting. See File No. SR-OCC-2013-09, 78 FR 47449 (Aug. 5, 2013).

⁶ The Chairman would be permitted to ask OCC management or others to attend meetings and to provide pertinent information and the Board would be permitted to call executive sessions from which OCC management may be excluded. A majority of the Directors then in office, but not fewer than six Directors, would constitute a quorum for the conduct of business of the Board.

⁷ The Board Charter would provide that in discharging its oversight role the Board may hire specialists or rely on outside advisors or specialists and that it would have the authority to approve related fees and terms of retention.

⁸ The Board would be required to establish a written charter for each committee.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Board Charter was adopted by the Board of Directors on March 7, 2013. Prior versions existed of the MRC Charter, AC Charter and PC Charter. Each of these Committee Charters were reviewed and amended in 2012 with the MRC Charter being further amended in 2013. The 2013 amendment provided that a Public Director would Chair the Membership/Risk Committee. See Securities Exchange Act Release No. 70486 (September 24, 2013), 78 FR 59994 (September 30, 2013) (SR-OCC-2013-12). OCC has not previously submitted the Board Committee Charters as rule changes pursuant to Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), and Rule 19b-4 thereunder, 17 CFR 240.19b-4, but is now doing so in light of recently provided guidance by the Commission’s staff. Since none of these Charters have been the subject of prior rule filings, the key terms of each Charter, as most recently approved by the Board, are described in more detail below in Item 3.

⁴ The Board Charter contains cross-references to such applicable provisions of OCC’s By-Laws. For ease of readability, those cross-references have not been repeated in this Item 3.

⁵ Pursuant to a recent OCC rule change that has been approved by the Commission, but not yet implemented by OCC, the office of Chairman of OCC will be split into two offices, Executive Chairman and President. Each of the Executive

functions and responsibilities of the Board.⁹ The Board Charter would also note that certain functions and responsibilities of the Board are set forth separately in the By-Laws¹⁰ and that each Director must act in good faith in the best interests of OCC and with due regard for the fiduciary responsibilities owed to OCC. Each Director would also be required to comply with certain conduct requirements.

Committee Charters

OCC has long maintained Charters for the MRC, AC and PC (each, a "Committee," and collectively, the "Committees"). Below is a discussion of the provisions common across all the Committee Charters, followed by a discussion of each Committee Charter's unique provisions.

The purpose of the Committee Charters is to describe the role each Committee plays in assisting the Board in fulfilling its responsibilities, as described in OCC's By-Laws and Rules, as well as specify the policies and procedures governing the membership and organization, scope of authority, and specific functions and responsibilities of each Committee. The guidelines for the composition of each Committee, as well as the policies regarding its meeting schedules, quorum rules, minute-keeping and reporting requirements, are set forth in each charter and conform to applicable requirements specified in OCC's By-Laws and Rules. Each Committee, subject to the direction of the Board, is authorized to act on behalf of the Board with respect to any matter necessary or appropriate to accomplish the purpose

and responsibilities set forth in its Charter, and is authorized to further delegate this authority to various subcommittees that it may form. Each Committee is authorized to make inquiries into any matter related to its respective purpose and responsibilities¹¹ and to confer with OCC's management and other employees as it deems appropriate. Additionally, the chair of each Committee would be authorized to act on behalf of its respective Committee in the case that immediate action is required, and it is impractical to convene such Committee.¹²

While each Committee Charter sets forth its own Committee composition requirements, each requires the inclusion of at least one Public Director and empowers the Board to remove or replace any Committee member at any time.

Each Committee Charter sets forth its own meeting schedule, though each empowers its respective chairman to call additional meetings as circumstances dictate. Each Committee Charter specifies that the agenda for each Committee's meetings would be established by the chairman of the Committee, or its designee, in consultation with the Secretary and OCC's management. A majority of the members would constitute a quorum, and if the chairman is not present at a meeting the members who are present would designate a member to act as the chairman. All Committees are permitted to call executive sessions from which guests of such Committee may be excluded, and Committee members are permitted to participate in all meetings by conference telephone call or other means of communication that permit all meeting participants to hear each other.¹³

Each Committee Charter requires the relevant Committee to review its respective charter annually, with each charter submitted to OCC's Board for reapproval with any such changes that the relevant Committee deems advisable.

The discussion that follows summarizes the key charter provisions associated with the specific functions of the MRC, AC and PC, respectively.

The MRC Charter

The MRC Charter sets forth the MRC's purpose as overseeing OCC's policies and processes for identifying, addressing and reporting on strategic, operational and financial risk as well as OCC's enterprise risk management framework, among other duties, as well as performing those functions delegated to it in OCC's By-Laws and Rules.¹⁴ In addition, the MRC Charter clarifies that it is the MRC's responsibility to review periodic reports from OCC's enterprise risk management program and to review and assess that program annually, and that the MRC must provide a report to the Board of Directors on an annual basis that summarizes its activities during the past year.¹⁵

The MRC Charter requires the MRC to be composed of OCC's Chairman, Member Vice Chairman, and three or more other Member Directors appointed annually by the Board. The MRC is to be chaired by a Public Director. The MRC Charter requires the MRC to meet at least seven times a year.

The MRC Charter sets forth certain responsibilities and functions for the MRC, including but not limited to, the following: reviewing and approving or disapproving certain requests from clearing members, including proposals to become managed clearing members, to expand clearing activities to include additional account types or products, and to participate in stock loan programs; periodically reviewing OCC's initial and ongoing membership requirements and standards; periodically reviewing and recommending modifications to the inputs to OCC's margin formula, the methodologies behind margin and clearing fund requirements, the lists of approved classes of GSE debt securities for margin deposits, and the applicable haircuts for margin; modifying margin requirements; reviewing the adequacy and efficacy of and recommending modifications to OCC's contingency plans for clearing member failures; periodically reviewing clearing member surveillance standards, and reviewing and advising management with respect to such surveillance; periodically reviewing and assessing, and reviewing reports from, OCC's enterprise risk management program; and performing

⁹ These include the responsibility to oversee: OCC's governance processes in a manner consistent with the Board Charter; processes and framework for assessing, managing and monitoring strategic, financial and operational risk; financial reporting, auditing, accounting and compliance processes; a system of internal controls; major capital expenditures; the development and design of employee compensation, incentive and benefit programs; and compensation of the Chairman and the President. The Board Charter would also specifically require the Board to approve and oversee OCC's business strategies, monitor performance in delivering clearance and settlement services; foster OCC's processes designed to ensure compliance with applicable laws and regulations and conduct business in a legal and ethical manner; assure management succession; and approve OCC's annual budget and corporate plan.

¹⁰ The Charter would identify the Board's responsibility under the By-Laws to approve applications for clearing membership and initial contributions to the clearing fund, OCC's fee structure as well as rebates, discounts and refunds of clearing fees, and modifications of OCC's By-Laws and Rules. The Board Charter would also identify the responsibility of the Board to determine disqualifications from Board service and fill vacancies, elect corporate officers, conduct hearings in connection with a denial or suspension of membership; and suspend a clearing member.

¹¹ The Committee Charters further permit each Committee to hire specialists or rely on outside advisors or specialists to assist in carrying out the Committee's activities and confirm the Committee's authority to approve any related terms of retention and fees. The MRC and PC's authority under these provisions, however, is subject to Board approval.

¹² In such instances, the committee chair must, as soon as practicable, report any actions taken to its committee for its ratification.

¹³ Meeting minutes would be required to be kept and circulated with the Board.

¹⁴ This oversight by the MRC includes, but is not limited to, review of material policies and processes concerning: membership criteria and financial safeguards; member and other counterparty risk exposure assessments; liquidity requirements and maintenance of financial resources; risk modeling and assessments; and default management planning.

¹⁵ The MRC may make other reports to the Board of Directors as it deems appropriate.

such other functions specified in OCC's By-Laws and Rules or delegated to it by the Board.

The AC Charter

The AC Charter sets forth the purpose of the AC as assisting the Board in fulfilling its oversight responsibilities, by serving as an independent and objective party to oversee OCC's financial reporting process, system of internal control, and auditing, accounting and compliance environment and processes. The AC's purpose also includes overseeing the audit efforts of OCC's independent accountants and the internal audit department, as well as facilitating open communication among the independent accountants, financial and senior management, internal audit department, compliance department and the Board.

The AC Charter requires that the AC be composed of three or more directors appointed annually by the Board, each of whom must have a working familiarity with basic finance and accounting practices. At least one member, if possible, is required to have accounting or related financial management expertise. The Board is permitted to appoint a Chair of the AC, though in the absence of a Board appointment, the AC should appoint a Chairman by majority vote of the full AC membership. The AC Charter requires the AC to meet at least four times a year.

The AC Charter also assigns specific activities to the AC, including, but not limited to, the following: appointing, overseeing and reviewing OCC's independent accountants, and all fees paid to them; reviewing the annual audit plan, annual internal control attestation engagement, and the annual audited financial statements and related reports; approve any decision of OCC's management to appoint or replace the Chief Compliance Officer; reviewing and approving the Compliance Charter; assessing the performance and effectiveness of the compliance program; reviewing and evaluating any annual compliance report that may as a matter of regulation be certified by the Chief Compliance Officer; reviewing remediation tracking performed by OCC's compliance department in connection with regulatory inspection reports and management's response; reviewing OCC's system to communicate and monitor compliance with and enforcement of OCC's Code of Conduct and the outcome of disciplinary actions taken by OCC; and establishing "whistleblower" procedures for the reporting by

personnel of any concerns regarding unethical or illegal conduct.

The PC Charter

The PC Charter sets forth the PC's purpose as assisting the Board in oversight of OCC's overall performance in promptly and accurately delivering clearance, settlement and other designated industry services and in the accomplishment of other periodically-established corporate goals and objectives given OCC's systemically important status. The PC is also tasked with recommending compensation for certain OCC officers and reviewing and approving the structure and design of employee compensation, incentive and benefit programs.

The PC Charter requires that the PC be composed of OCC's Chairman, Member Vice Chairman and three or more other directors appointed annually by the Board, and that the PC be chaired by OCC's Member Vice Chairman. The PC Charter states that the PC will generally meet in advance of each regularly scheduled Board meeting.

The PC Charter describes the PC's role as one of oversight, including oversight of management's responsibility to identify, organize, and manage the operational, systems, technology, financial, human, and other resources necessary to support OCC's clearance, settlement and other business activities. The PC Charter sets forth additional functions and responsibilities including, but not limited to, the following: regularly scheduled reviews of OCC's Corporate Plan, Budget, executive performance and compensation, employment contracts, changes in OCC's fee structure, and special financial matters; oversight of the administration of OCC's various incentive, bonus, deferred compensation, retirement and welfare plans; periodic assessment of succession plans for key executives; oversight of the compensation, benefits and perquisites of OCC's executive and management personnel, provided that decisions with respect to the individual compensation of the Chairman, Management Vice Chairman, and President shall be made in the form of recommendations to the Board; and any other activities that are consistent with the PC Charter, as the PC or the Board may deem necessary or appropriate.

2. Statutory Basis for the Proposed Rule Change

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹⁶ because the

Board Charter and Committee Charters will help ensure that OCC's governance structure is designed to protect investors and the public interest. By creating a Board Charter and making certain amendments to the MRC Charter, AC Charter and PC Charter that clarify the duties and operations of the Board and its Committees OCC will have, as required under Rule 17Ad-22(d)(8),¹⁷ a clear and transparent governance structure that will fulfill the public interests requirements in Section 17A of the Act, support the objectives of OCC's owners and participants, and promote the effectiveness of OCC's risk management procedures.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.¹⁸ This proposed rule change will help ensure that OCC meets regulatory requirements that it has a clear and transparent governance structure, as well as clarify the organization, duties and operation of its Board and Committee, through the adoption of the Board Charter and updated Committee Charters. To the extent OCC's clearing members are affected by proposed rule change, OCC believes that, by clarifying and publishing the terms of the Board and Committee Charters in the public domain, all of its participants will have greater certainty concerning OCC's governance arrangements and that such clarification will facilitate the prompt and accurate settlement of securities transactions. Accordingly, OCC does not believe that the proposed rule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may

¹⁷ 17 CFR 240.17Ad-22(d)(8).

¹⁸ 15 U.S.C. 78q-1(b)(3)(I).

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or
- Send an email to rule-comments@sec.gov. Please include File Number SR-OCC-2013-17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington DC 20549-1090.

All submissions should refer to File Number SR-OCC-2013-17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room located at 100 F Street NE., Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_13_17.pdf. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2013-17 and should be submitted on or before November 20, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-25646 Filed 10-29-13; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice 8510]

Department of State Performance Review Board Members

In accordance with section 4314(c)(4) of 5 United States Code, the Department of State has appointed the following individuals to the Department of State Performance Review Board for Senior Executive Service members:

Robert Goldberg, Chairperson, Director, Office of the United States Foreign Assistance Resources, Department of State;

Linda Jacobson, Assistant Legal Advisor, Office of the Legal Advisor, Department of State;

Margaret Pollack, Office Director, Bureau of Population, Refugees and Migration, Department of State; and
Teddy Taylor, Diplomat in Residence, Bureau of Human Resources, Department of State.

Dated: October 21, 2013.

Hans Klemm,

Acting Director General of the Foreign Service and Director of Human Resources, Department of State.

[FR Doc. 2013-25755 Filed 10-29-13; 8:45 am]

BILLING CODE 4710-15-P

DEPARTMENT OF TRANSPORTATION

[Docket No. MARAD-4910-81-P]

Agency Requests for Renewal of a Previously Approved Information Collection(s): Approval of Underwriters of Marine Hull Insurance

AGENCY: Maritime Administration.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request

the Office of Management and Budget (OMB) approval to renew an information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104-13.

DATES: Written comments should be submitted by December 30, 2013.

ADDRESSES: You may submit comments identified by Docket No. MARAD-2013-0112 through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

Note: All comments received will be posted without change to <http://www.regulations.gov> including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Michael Yarrington, Chief, Office of Marine Insurance, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2133-0517.

Title: Approval of Underwriters of Marine Hull Insurance.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Summary of Collection of Information: This collection of information involves the approval of marine hull underwriters to insure Maritime Administration program vessels. Foreign and domestic applicants will be required to submit financial data upon which Maritime Administration approval would be based.

¹⁹ 17 CFR 200.30-3(a)(12).

Need and Use of the Information: The information is needed in order for Maritime Administration officials to evaluate the underwriters and determine their suitability for providing marine hull insurance on Maritime Administration vessels.

Respondents: Marine insurance brokers and underwriters of marine insurance.

Number of Respondents: 62.

Frequency: Annually.

Number of Responses: 62.

Total Annual Burden: 46 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

Dated: October 24, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013-25621 Filed 10-29-13; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2013-0182]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 19 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective October 30, 2013. The exemptions expire on October 30, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366-4001,

fmcsamedical@dot.gov, FMCSA, Room W64-224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On August 19, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 19 individuals and requested comments from the public (78 FR 50486). The public comment period closed on September 18, 2013, and one comment was received.

FMCSA has evaluated the eligibility of the 19 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 19 applicants have had ITDM over a range of 1 to 28 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the August 19, 2013, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment is considered and discussed below.

The Pennsylvania Department of Transportation is in favor of granting exemptions to Peter Engel, Lewis Forrester, Charles LaBruno, and Shawn E. Marks after reviewing their driving histories.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 19 exemption applications, FMCSA exempts Francisco Barron (TX), Jase V. Burkhart (SD), Peter Engel (PA), Jhon A. Fitzgerald (ME), Lewis E. Forrester (PA), Randall G. Freed (IL), Jesus A. Gonzales (NY), Robert D. Graves (IA), Michael G. Harp (OK), Ray Harrison (MD), Edward E. Hartford (NY), Michael Hatfield (KY), Charles LaBruno (PA), Clinton D. Lewis (IA), Shawn E. Marks (PA), John D. Patterson (OH), Ricky A. Root (IL), Tina M. Schreiber (MN), and Donald G. Staggs (CA) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid

for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: October 24, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013-25797 Filed 10-29-13; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2001-9258; FMCSA-2011-26690]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 5, 2013. Comments must be received on or before November 29, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA-2001-9258; FMCSA-2011-26690], using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT:

Elaine M. Papp, Chief, Medical Programs Division, 202-366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers

of CMVs in interstate commerce, for a two-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 13 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 13 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Kevin G. Clem (SD)
Rocky J. Lachney (LA)
Herman G. Lovell (OR)
Gerard L. Pagan (NC)
Danny C. Pope (IL)
David A. Rice (PA)
Michael J. Robinson (WV)
Levi A. Shetler (OH)
Rick E. Smith (IL)
Juan E. Sotero (FL)
Fred L. Stotts (OK)
Randall K. Tyler (AL)
Steven R. Wetlesen (AL)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 13 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 17743; 66 FR 33990; 68 FR 35772; 70 FR 33937; 72 FR 32705; 74 FR 26464; 76 FR 34135; 76 FR 64169; 76 FR 75943). Each of these 13 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by November 29, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 13 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience,

and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket numbers FMCSA–2001–9258; FMCSA–2011–26690 and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA–2001–9258; FMCSA–2011–26690 and click “Search.” Next, click “Open Docket Folder” and you will find

all documents and comments related to the proposed rulemaking.

Issued on: October 24, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013-25795 Filed 10-29-13; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0190]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 25 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before November 29, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2013-0190 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 25 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Phyllis J. Cameron

Ms. Cameron, 67, has had ITDM since 2008. Her endocrinologist examined her in 2013 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Cameron understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Cameron meets the vision requirements of 49 CFR 391.41(b)(10). Her optometrist examined her in 2013 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Indiana.

Jarrod S. Childress

Mr. Childress, 32, has had ITDM since 1995. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Childress understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Childress meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Kentucky.

James M. Costello

Mr. Costello, 35, has had ITDM since 2013. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Costello understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Costello meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Gary L. Crawford

Mr. Crawford, 54, has had ITDM since 2013. His endocrinologist examined him in 2013 and certified that he has had no

severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Crawford understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crawford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Roger D. Droog

Mr. Droog, 67, has had ITDM since 2009. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Droog understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Droog meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Clair H. Gilmore

Mr. Gilmore, 67, has had ITDM since 2004. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gilmore understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gilmore meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class A CDL from Washington.

Reuben L. Hunter, Jr.

Mr. Hunter, 70, has had ITDM since 2010. His endocrinologist examined him

in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hunter understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hunter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

Michael A. Kollos

Mr. Kollos, 38, has had ITDM since 1987. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kollos understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kollos meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

Daniel R. Lindahl

Mr. Lindahl, 28, has had ITDM since 1992. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lindahl understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lindahl meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

Kenneth G. Mahan, Jr.

Mr. Mahan, 69, has had ITDM since 2002. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mahan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mahan meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class D Operator's license from Alabama.

Jason L. Martin

Mr. Martin, 31, has had ITDM since 2008. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Martin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

James F. McSweeney

Mr. McSweeney, 65, has had ITDM since 2009. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McSweeney understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McSweeney meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable,

non-proliferative diabetic retinopathy. He holds an Operator's license from New Hampshire.

Eric W. Miller

Mr. Miller, 51 has had ITDM since 2013. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Thomas E. Orms

Mr. Orms, 56, has had ITDM since 2000. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Orms understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Orms meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Alabama.

Michael D. Pederson

Mr. Pederson, 38, has had ITDM since 1991. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pederson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pederson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist

examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

William J. Rodgers

Mr. Rodgers, 51, has had ITDM since 2013. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rodgers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rodgers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Mark A. Rosenau

Mr. Rosenau, 46 has had ITDM since 2013. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rosenau understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rosenau meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

George M. Sapirstein

Mr. Sapirstein, 59, has had ITDM since 2000. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sapirstein understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sapirstein meets the requirements of the

vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New Jersey.

Daniel B. Shaw

Mr. Shaw, 48 has had ITDM since 1990. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shaw understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shaw meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Florida.

Christopher A. Sosa

Mr. Sosa, 43, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sosa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sosa meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

John C. Thomas

Mr. Thomas, 63, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Thomas understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thomas meets the vision

requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Indiana.

Richard Wasko

Mr. Wasko, 55, has had ITDM since 1993. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wasko understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wasko meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Florida.

Douglas E. Wilhoit

Mr. Wilhoit, 49, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilhoit understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilhoit meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Richard A. Wilk

Mr. Wilk, 54, has had ITDM since 2011. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Wilk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Ohio.

Thomas A. Young

Mr. Young, 58, has had ITDM since 2005. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Young understands diabetes management and monitoring, as stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Young meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Texas.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441)¹. The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year

¹ Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2013-0190 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to <http://www.regulations.gov> and in the

search box insert the docket number FMCSA–2013–0190 and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to the proposed rulemaking.

Issued on: October 24, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–25798 Filed 10–29–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Request for Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting public comments on the following information collection was published on August 5, 2013 (**Federal Register**/Vol. 78, No. 150/pp. 47488–47489).

DATES: Submit comments to the Office of Management and Budget (OMB) on or before November 29, 2013.

FOR FURTHER INFORMATION CONTACT: Alan Block at the National Highway Traffic Safety Administration, Office of Behavioral Safety Research (NTI–131), W46–499, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Block’s phone number is 202–366–6401 and his email address is alan.block@dot.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2127–0667.

Type of Request: Renewal.

Title: Focus Groups for Traffic Safety Programs, Interventions and Countermeasures.

Form No.: This collection of information uses no standard form.

Type of Review: Regular.

Respondents: Each year NHTSA anticipates conducting 140 focus groups

annually, or 420 over the three year period under a renewed clearance. Likely respondents are licensed drivers 18 years of age and older who have not participated in a previous focus group session. In some cases, stakeholders such as law enforcement and health officials may participate in the focus groups. Each respondent would participate in one focus group.

Estimated Number of Respondents:

There will be an average of 10 participants per focus group, for an annual total of 1,400 respondents and a three year total of 4,200 respondents.

Estimated Time per Response: Each respondent would participate in a single focus group that would average 80 minutes in duration. Participants will be recruited by intercept or telephone using a brief screening questionnaire estimated to take no more than another 10 minutes, for a total of 90 minutes.

Total Estimated Annual Burden Hours: The total estimated annual burden would be 140 groups × 10 participants × 90 minutes = 2,100 hours. Total estimated burden under the three year period covered by the clearance would be 6,300 hours.

Frequency of Collection: Focus groups will be conducted on an as-needed (periodic) basis during each of the three years covered by the clearance.

Abstract: The National Highway Traffic Safety Administration (NHTSA) proposes to renew its generic clearance to conduct focus groups. NHTSA anticipates the need to periodically conduct focus group sessions to refine its efforts to reduce traffic injuries and fatalities. Session participation would be voluntary and the focus group participants would receive remuneration for their involvement. The respondents would not incur any reporting cost from the information collection. The respondents also would not incur any record keeping burden or record keeping cost from the information collection. Focus group topics will include: Strategic messaging (e.g., slogans or advertisement concepts concerning seat belt use, impaired driving, driver distraction, tire pressure monitoring), problem identification (e.g., discussions with high-risk groups on beliefs, attitudes, driving behaviors, or reactions to interventions and countermeasures), and resource development (e.g., testing materials designed to communicate essential information about traffic safety issues such as vehicle or equipment performance rating systems). For each focus group project, NHTSA will submit an individual Information Collection Request (ICR) to the Office of Management and Budget (OMB)

detailing the specific nature and methodology of planned focus group sessions prior to any collection activity covered under this generic clearance.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for Department of Transportation, National Highway Traffic Safety Administration, or by email at oir_submission@omb.eop.gov, or fax: 202–395–5806.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation, including whether the information will have practical utility; the accuracy of the Department’s estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Authority: 44 U.S.C. 3506(c)(2)(A).

Issued in Washington, DC, on October 25, 2013.

Jeffrey Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2013–25756 Filed 10–29–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2013–0113]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and

reinstatements of previously approved collections.

This document describes the collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 30, 2013.

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA–2013–0113 using any of the following methods:

Electronic submissions: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Mail: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: 1-(202) 493–2251.

Instructions: Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://DocketsInfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Russell Pierce, Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–132), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W46–472, Washington, DC 20590. Dr. Pierce's phone number is (202) 366–5599 and his email address is russell.pierce@dot.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a

document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Medical Review Guidelines and Medical Advisory Board Practices

Type of Request—New Information Collection.

OMB Clearance Number—None.

Form Number—NHTSA 1228.

Requested Expiration Date of Approval—3 years from date of approval.

Summary of the Collection of Information—The National Highway Traffic Safety Administration (NHTSA) proposes to collect information from an individual in the Medical Review Department in each of the 50 State Driver Licensing Agencies and The District of Columbia about their State's driver medical review structure and processes. The information collected will be used to produce a short narrative describing each State's medical review structure and processes, plus several appendices with tables displaying each individual State's responses to the questions, and totals for each response. Data will be collected, according to each respondent's preference, via a Microsoft Word document distributed and collected via email or a print version distributed and collected via US mail, and the responses will consist primarily of checkbox response types and fill-in-the-blank options when non-standard checkboxes are selected. Additionally, survey respondents will be provided with a short narrative that describes their State's medical review processes, and asked to review and edit/update the narrative as necessary to ensure its accuracy.

Description of the Need for the Information and Proposed Use of the Information—NHTSA was established to reduce the number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

As our population ages, age-related impairments in safe driving abilities will become more prevalent. The private automobile remains by far the most often used and most preferred means of meeting community mobility needs among older adults. Along with the increase in the number of older drivers, an increase in the driving exposure of older adults is likely, both in terms of the frequency of their trips and the distances they drive. In addition, due to increased physical frailty, older individuals are also most likely to be seriously injured or killed in an automotive crash. Therefore, driver medical review practices are likely to assume a more prominent role in the years ahead.

Medical review guidelines and practices can help evaluate drivers referred to a State motor vehicle licensing agency for reexamination due to concerns about unsafe driving performance possibly resulting from suspected age or medical condition related impairments in visual, physical, or mental abilities. Society has an interest in ensuring that these medical review guidelines and practices are in place and are effective in reducing motor vehicle crashes, injury, and death. This data collection will provide NHTSA with an accurate description of current medical review practices across the country. This is a necessary first step in identifying which structures and processes work best.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—TransAnalytics (NHTSA's Contractor) plans to enlist the assistance of the American Association of Motor Vehicle Administrators (AAMVA) to identify the most appropriate contact in each State, for distribution of the survey and the narrative summary for review and update.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information—There will be approximately 70 questions on the survey requiring checkbox responses, and an occasional fill-in-the-blank response required when "other" is

checked. We estimate the time to complete the survey for the medical review contact in each State to be 2.5 hours. Additionally, we estimate 2.5 hours of time for each medical review contact to review and edit the narrative describing their State's medical review structure and process. This estimate includes the time that may be required to respond to telephone contacts made by TransAnalytics if necessary, to follow-up or clarify survey responses. The total estimated annual burden will be 255 hours (5 hours for each respondent, 50 States + Washington, DC). Survey respondents will incur no costs from the data collection and will incur no record keeping burden and no record keeping cost from the information collection.

Authority: 44 U.S.C. 3506(c)(2)(A).

Issued on October 25, 2013.

Jeffrey Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2013-25793 Filed 10-29-13; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 314 (Sub-No. 6X)]

Chicago Central & Pacific Railroad Company—Abandonment Exemption— in Linn County, Iowa

Chicago Central & Pacific Railroad Company (CCP)¹ has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 0.49-mile line of railroad extending between milepost 230.24 and milepost 229.75 in Cedar Rapids, Linn County, Iowa (the Line). The Line traverses United States Postal Service Zip Code 52302.

CCP has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic on the Line to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11

(transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 29, 2013, unless stayed pending reconsideration.² Petitions to stay that do not involve environmental issues,³ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),⁴ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 12, 2013. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 19, 2013, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to CCP's representative: Audrey L. Brodrick, Fletcher & Sippel LLC, 29 N. Wacker Dr., Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CCP has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA issued an environmental assessment (EA) on October 23, 2013. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC

² This notice was scheduled to be published in the **Federal Register** during the time that the agency was closed due to a lapse in appropriations. Because publication of this notice has been delayed, the effective date of the exemption will also be delayed to provide adequate notice to the public.

³ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

⁴ Each OFA must be accompanied by the filing fee, which is currently set at \$1,600. See 49 CFR 1002.2(f)(25).

20423-0001) or by calling OEA at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877-8339. Comments on environmental and historic preservation matters must be filed by November 7, 2013.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CCP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by CCP's filing of a notice of consummation by October 30, 2014, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "www.stb.dot.gov."

Decided: October 24, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013-25741 Filed 10-29-13; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35755]

BNSF Railway Company, CBEC Railway Inc., Iowa Interstate Railroad, Ltd., and Union Pacific Railroad Company—Joint Relocation Project Exemption—In Council Bluffs, Iowa

On September 30, 2013, BNSF Railway Company (BNSF), CBEC Railway Inc. (CBEC), Iowa Interstate Railroad, Ltd. (IAIS), and Union Pacific Railroad Company (UP) (collectively, applicants) jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(5) to participate in a joint relocation project in Council Bluffs, Iowa (the City).

The purpose of the joint relocation project is to facilitate the reconstruction of Interstates 80 and 29 in Council Bluffs. The Council Bluffs Interstate System (CBIS) Improvements Project is a public works project initiated by the Iowa Department of Transportation (IDOT) that involves the joint relocation project and an acquisition by IAIS of a line of railroad owned by BNSF.¹

¹ *Iowa Interstate R.R.—Acquis. Exemption—Line of BNSF Ry.*, FD 35751 (filed Aug. 7, 2013). The

¹ CCP is an indirect subsidiary of Canadian National Railway Company (CNR) and is controlled by Grand Trunk Corporation, a wholly owned subsidiary of CNR.

According to applicants, the following steps will be taken to allow for the CBIS Improvements Project to proceed. First, BNSF will close its Council Bluffs yard and convey the underlying land to the State of Iowa. Second, BNSF will abandon the following two segments of its Council Bluffs Subdivision: (1) The segment located between milepost 490.62 and milepost 491.00, a distance of approximately 0.38 miles; and (2) the segment located between milepost 491.75 and 492.65, a distance of approximately 0.90 miles. The first segment will be relocated to the west of Mosquito Creek. This segment is located between BNSF Bayard Subdivision milepost 482.08 and a point near BNSF Council Bluffs Subdivision milepost 488.85, a distance of approximately 1.6 miles. The second segment will be relocated to the west of Highway 192 in downtown Council Bluffs. This segment is located between BNSF milepost 492.65 and the connection to the IAIS main line at IAIS milepost 489.3, a distance of approximately 0.3 miles. Third, CBEC will abandon its main line between milepost 3.90 and milepost 6.47, a distance of approximately 2.8 miles. That portion of CBEC's main line will be relocated to the west bank of Mosquito Creek between milepost 3.90, approximately 1,500 feet to the northwest of IA-92/US-275 and the connection with the lead track to MidAmerican Energy Company's Walter Scott, Jr. Energy Center (MidAmerican), a distance of approximately 1.5 miles. Fourth, UP's trackage rights on CBEC's line to be abandoned will be discontinued and relocated to CBEC's newly constructed main line. Fifth, BNSF and CBEC will establish a crossover connection between their newly constructed and parallel main lines on the west side of Mosquito Creek at a point approximately 900 feet south of I-29. CBEC will grant overhead trackage rights to BNSF from that connection and from BNSF Council Bluffs Subdivision milepost 488.6 to the connection with the lead track to MidAmerican, a distance of approximately 0.6 miles and 0.5 miles, respectively. Sixth, BNSF and CBEC also will establish an opposite-direction crossover connection between their newly constructed and parallel main lines on the west side of Mosquito Creek at a point approximately 1,400 feet south of I-29. BNSF will grant overhead trackage rights to CBEC from that connection to a new connection with CBEC's relocated SIRE industrial lead track at BNSF Council Bluffs

Subdivision milepost 488.85, a distance of approximately 1,500 feet. Seventh, BNSF will grant overhead trackage rights to IAIS between BNSF Bayard Subdivision milepost 482.08 and BNSF Council Bluffs Subdivision milepost 488.6. Lastly, BNSF and IAIS will establish new connections between the two carriers at BNSF Bayard Subdivision milepost 482.08 and IAIS milepost 489.30, which will enable BNSF to crossover IAIS from its Council Bluffs Subdivision to reach its Bayard Subdivision through a dual switch arrangement.

Applicants state that the proposed joint relocation project will not disrupt service to shippers, nor will it expand service by BNSF, CBEC, or IAIS into a new territory. According to applicants, there are no shippers located on the rail segments BNSF and CBEC are abandoning.

The Board will exercise jurisdiction over the abandonment, construction, or sale components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track or transfer of existing track involves expansion into new territory. *See City of Detroit v. Canadian Nat'l Ry.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne Cnty. Port Authority v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995); *Flats Indus. R.R. & Norfolk S. Ry.—Joint Relocation Project Exemption—in Cleveland, Ohio*, FD 34108 (STB served Nov. 15, 2001). Line relocation projects may embrace trackage rights transactions such as those involved here. *See Detroit, Toledo & Ironton R.R.—Trackage Rights—Between Washington Court House & Greggs, Ohio—Exemption*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components of this relocation project require no separate approval or exemption because the relocation project will not disrupt service to shippers, expand BNSF's, CBEC's, or IAIS's service into a new territory, or alter the existing competitive situation, and thus, this joint relocation project qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease and Operate-California Western Railroad*, 360 I.C.C. 653 (1980).

The transaction may be consummated on or after November 13, 2013, the effective date of the exemption.²

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 6, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35755, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on applicants' representatives: Karl Morell, Ball Janik LLP, 655 Fifteenth Street NW., Suite 225, Washington, DC 20005 (BNSF's representative); Benjamin M. Clark, Sullivan & Ward, P.C., 6601 Westown Parkway, Suite 200, West Des Moines, Iowa 50266 (CEC's representative); Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606 (IAIS's representative); and Jeremy M. Berman, Union Pacific Railroad Company, 1400 Douglas Street STOP 1580, Omaha, NE., 68179 (UP's representative).

Board decisions and notices are available on our Web site at "www.stb.dot.gov."

Decided: October 25, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2013-25740 Filed 10-29-13; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 24, 2013.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the date of publication of this notice.

² This notice was scheduled to be published in the **Federal Register** during the time that the agency was closed due to a lapse in appropriations. Because publication of this notice has been delayed, the effective date of the exemption will also be delayed to provide adequate notice to the public.

Board will address that petition for exemption in a subsequent decision.

DATES: Comments should be received on or before November 29, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission@OMB.EOP.GOV and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at PRA@treasury.gov.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927-5331, email at PRA@treasury.gov, or the entire information collection request may be found at www.reginfo.gov.

Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559-0027.

Type of Review: Revision of a currently approved collection.

Title: CDFI Program and NMTC Program Annual Report including CIIS.

Abstract: The annual report provides qualitative and quantitative information on the Awardee's compliance with its performance goals, its financial health and the timeline in which the CDFI Fund's financial and technical assistance was used. The data collection will be used to collect compliance and performance data from certified CDFIs and CDEs and from NACD awardees.

Affected Public: Private Sector: Businesses or other for-profits, Not-for-profit institutions.

Estimated Annual Burden Hours: 46,959.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013-25632 Filed 10-29-13; 8:45 am]

BILLING CODE 4810-70-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 24, 2013.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 29, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission@OMB.EOP.gov and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141-D, Washington, DC 20220, or email at PRA@treasury.gov.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 622-1295, email at PRA@treasury.gov, or the entire information collection request may be found at www.reginfo.gov.

Internal Revenue Service (IRS)

OMB Number: 1545-0201.

Type of Review: Extension without change of a currently approved collection.

Title: Request for Change in Plan/Trust Year.

Form: 5308.

Abstract: Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 339.

OMB Number: 1545-0786.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8110—Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form.

Abstract: The Internal Revenue Service needs the information in order to ensure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold obligations under section 165(j)) and to ensure that U.S. persons holding bearer obligations properly report income and gain on such obligations. The people reporting will be institutions holding bearer obligations.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 39,742.

OMB Number: 1545-0823.

Type of Review: Extension without change of a currently approved collection.

Title: TD 7925—Indian Tribal Governments Treated As States For Certain Purposes.

Abstract: The governing body of a tribe, band, pueblo, community, village or group of Indians, or Alaska Natives, will qualify as an Indian tribal government upon a determination by the Internal Revenue Service that such governing body exercises governmental functions. Designation of a governing body as an Indian tribal government will be by revenue procedure. If a governing body is not currently designated by the applicable revenue procedure as an Indian tribal government, and such governing body believes that it qualifies for such designation, the governing body may apply for a ruling from the Internal Revenue Service. Such governing body will qualify as an Indian tribal government, for purposes of these regulations, only upon obtaining a favorable ruling from the Internal Revenue Service.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 25.

OMB Number: 1545-0954.

Type of Review: Extension without change of a currently approved collection.

Title: Return for Nuclear Decommissioning Funds and Certain Related Persons.

Form: 1120-ND.

Abstract: A nuclear utility files Form 1120-ND to report the income and taxes of a fund set up by the public utility to provide cash for the dismantling of the nuclear power plant. The IRS uses Form 1120-ND to determine if the fund income taxes are correctly computed and if a person related to the fund or the nuclear utility must pay taxes on self-dealing.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 3,259.

OMB Number: 1545-1013.

Type of Review: Extension without change of a currently approved collection.

Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

Form: 8612.

Abstract: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981. IRS uses the information to verify that the correct amount of tax has been reported.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 196.

OMB Number: 1545–1270.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8421—Gasoline Excise Tax (PS–120–90); TD 8609—Gasohol; Compressed Natural Gas (PS–66–93).

Abstract: TD 8609: This regulation relates to gasohol blending and the tax on compressed natural gas (CNG). The sections relating to gasohol blending affect certain blenders, enterers, refiners, and throughputters. The sections relating to CMG affect persons that sell or buy CNG for use as a fuel in a motor vehicle or motorboat. TD 8421: This regulation relates to the federal excise tax on gasoline. It affects refiners, importers, and distributors of gasoline and provides guidance relating to taxable transactions, persons liable for tax, gasoline blendstocks, and gasohol.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 366.

OMB Number: 1545–1338.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8578—Election Out of Subchapter K for Producers of Natural Gas.

Abstract: This regulation contains certain requirements that must be met by co-producers of natural gas subject to a joint operating agreement in order to elect out of subchapter K of chapter 1 of the Internal Revenue Code. Under section 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements on the regulation's effective date are to file Form 3115 and certain additional information to obtain the Commissioner's consent to a change in method of accounting to either of the two new permissible accounting methods in the regulations.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 5.

OMB Number: 1545–1354.

Type of Review: Extension without change of a currently approved collection.

Title: Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

Form: 8833.

Abstract: Revenue Procedure 2010–19 provides guidance for individuals who

emigrate from Canada and wish to make an election for U.S. federal income tax purposes. Form 8833 is used by taxpayers to make the treaty-based return position disclosure required by section 6114. The form must also be used by dual-resident taxpayers to make the treaty-based return position disclosure required by Regulations section 301.7701(b)–7.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 25,740.

OMB Number: 1545–1722.

Type of Review: Extension without change of a currently approved collection.

Title: Extraterritorial Income Exclusion.

Form: 8873.

Abstract: A taxpayer uses Form 8873 to claim the gross income exclusion provided for by section 114 of the Internal Revenue Code.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 19,087,500.

OMB Number: 1545–1726.

Type of Review: Extension without change of a currently approved collection.

Title: Practice Before the Internal Revenue Service.

Form: 14360, 14364, 14392.

Abstract: These regulations affect individuals who are eligible to practice before the Internal Revenue Service. These regulations also authorize the Director of Practice to act upon applications for enrollment to practice before the Internal Revenue Service. The Director of Practice will use certain information to ensure that: 1) enrolled agents properly complete continuing education requirements to obtain renewal; 2) practitioners properly obtain consent of taxpayers before representing conflicting interests; 3) practitioners do not use e-commerce to make misleading solicitations. REG–138637–07 contains proposed modifications revising the regulations governing practice before the Internal Revenue Service (IRS). The proposed regulations affect individuals who practice before the IRS and providers of continuing education programs. The proposed regulations modify the general standards of practice before the IRS and the standards with respect to tax returns.

Affected Public: Individuals or Households; Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,774,375.

OMB Number: 1545–1748.

Type of Review: Extension without change of a currently approved collection.

Title: REG–106917–99 (Final) Changes in Accounting Periods.

Abstract: Section 1.441–2(b)(1) requires certain taxpayers to file statements on their federal income tax returns to notify the Commissioner of the taxpayers' election to adopt a 52–53 week taxable year. Section 1.442–1(b)(4) provides that certain taxpayers must establish books and records that clearly reflect income for the short period involved when changing their taxable year to a fiscal taxable year. Section 1.442–1(d) requires a newly married husband or wife to file a statement with their short period return when changing to the other spouse's taxable year.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 500.

OMB Number: 1545–2147.

Type of Review: Extension without change of a currently approved collection.

Title: Internal Revenue Code Section 108(i) Election.

Abstract: Pub. L. 111–5 (American Recovery and Reinvestment Act), Section 1231 requires taxpayers to attach an election statement to the taxpayer's tax return to obtain a tax benefit. Information on how to make the election and what the statement must include must be published as early as possible to allow taxpayers sufficient time to determine whether to make the election and timely prepare and file their tax returns.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 300,000.

OMB Number: 1545–2167.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2010–28, Stripping Transactions for Qualified Tax Credit Bonds.

Abstract: The IRS requires the information to ensure compliance with the tax credit bond credit coupon stripping requirements, including ensuring that no excess tax credit is taken by holders of bonds and coupons strips. The information is required in order to inform holders of qualified tax

credit bonds whether the credit coupons relating to those bonds may be stripped as provided under § 54A(i). The respondents are issuers of tax credit bonds, including states and local governments and other eligible issuers.
Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 1,000.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013-25625 Filed 10-29-13; 8:45 am]

BILLING CODE 4810-01-P



FEDERAL REGISTER

Vol. 78

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October 30, 2013

Part II

Department of Health and Human Services

45 CFR Parts 144, 146, 147, et al.

Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES**45 CFR Parts 144, 146, 147, 153, 155, and 156**

[CMS–9957–F2; CMS–9964–F3]

RIN 0938–AR82; RIN 0938–AR74

Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Final rule.

SUMMARY: This final rule implements provisions of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act). Specifically, this final rule outlines financial integrity and oversight standards with respect to Affordable Insurance Exchanges, qualified health plan (QHP) issuers in Federally-facilitated Exchanges (FFE), and States with regard to the operation of risk adjustment and reinsurance programs. It also establishes additional standards for special enrollment periods, survey vendors that may conduct enrollee satisfaction surveys on behalf of QHP issuers, and issuer participation in an FFE, and makes certain amendments to definitions and standards related to the market reform rules. These standards, which include financial integrity provisions and protections against fraud and abuse, are consistent with Title I of the Affordable Care Act. This final rule also amends and adopts as final interim provisions set forth in the Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 interim final rule, published in the **Federal Register** on March 11, 2013, related to risk corridors and cost-sharing reduction reconciliation.

DATES: These regulations are effective on December 30, 2013.

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Jacob Ackerman at (301) 492–4179 for matters relating to Parts 144 and 147, single risk pool and catastrophic plans.

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Ariel Novick at (301) 492–4309 for matters relating to the oversight of cost-sharing reductions and advance payments of the premium tax credit.

Johanna Lauer at (301) 492–4397 for matters relating to cost-sharing reduction reconciliation.

Rebecca Zimmermann at (301) 492–4396 for matters relating to quality standards, Part 156, Subpart L.

Cindy Yen at (301) 492–5142 for matters relating to Part 156 other than cost-sharing reductions, advance payments of the premium tax credit, and quality standards.

Pat Meisol at (410) 786–1917 for matters relating to confirmation of HHS payment and collections reports.

SUPPLEMENTARY INFORMATION:**Electronic Access**

This **Federal Register** document is also available from the **Federal Register** online database through *Federal Digital System (FDsys)*, a service of the U.S. Government Printing Office. This database can be accessed via the internet at <http://www.gpo.gov/fdsys>.

Executive Summary

Starting October 1, 2013, qualified individuals and qualified employees may purchase private health insurance coverage through competitive marketplaces called Affordable Insurance Exchanges, or “Exchanges” (also called Health Insurance Marketplaces). This final rule sets forth oversight and financial integrity standards with respect to Exchanges, Qualified Health Plan (QHP) issuers in Federally-facilitated Exchanges (FFE), and States with regard to the operation of risk adjustment and reinsurance programs. It establishes additional standards for special enrollment periods, survey vendors that may conduct enrollee satisfaction surveys on behalf of QHP issuers in Exchanges, and issuer participation in an FFE, and makes certain amendments to definitions and standards related to the market reform rules. These standards were proposed in a proposed rule, titled “Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, Premium Stabilization Programs, and Market Standards” (78 FR 37032), which was published in the **Federal Register** on June 19, 2013. Finally, this final rule amends standards and adopts as final interim provisions set forth in the Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 interim final rule, published in the **Federal Register** on March 11, 2013 (78

FR 15541), related to risk corridors and cost-sharing reduction reconciliation.

Although many of the provisions in this rule become effective by January 1, 2014, we believe that affected parties will not have difficulty complying with the provisions by their effective dates, because most of the standards are based on existing standards currently in effect in the private market, were previously proposed through the Blueprint process, were discussed in agency-issued sub-regulatory guidance, or were discussed in the preambles to the Exchange Establishment Rule,¹ Premium Stabilization Rule,² Market Reform Rule,³ or the HHS Notice of Benefit and Payment Parameters for 2014 (2014 Payment Notice).⁴ In addition to soliciting general comments on the substance of the proposed provisions, we sought input on ways to implement these policies to minimize burden.

Table of Contents

- I. Background
 - A. Legislative Overview
 - B. Stakeholder Consultation and Input
- II. Provisions of the Final Regulation and Analysis of and Responses to Public Comments
 - A. Part 144—Requirements Relating to Health Insurance Coverage
 - 1. Subpart A—General Provisions
 - a. Scope and Applicability (§ 144.102(c))
 - b. Definitions (§ 144.103)
 - B. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets
 - 1. Guaranteed Availability and Renewability of Coverage (§ 147.104 and § 147.106)
 - C. Part 153—Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment Under the Affordable Care Act
 - 1. Subpart A—General Provisions
 - a. Definitions (§ 153.20)
 - 2. Subpart C—State Standards Related to the Reinsurance Program
 - a. Maintenance of Records (§ 153.240(c))
 - b. General Oversight Requirements for State-Operated Reinsurance Programs (§ 153.260)
 - c. Restrictions on Use of Reinsurance Funds for Administrative Expenses (§ 153.265)
 - 3. Subpart D—State Standards Related to the Risk Adjustment Program

¹ Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers, 77 FR 18310 (March 27, 2012).

² Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment, 77 FR 17220 (March 23, 2012).

³ Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review, 78 FR 13406 (February 27, 2013).

⁴ Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014, 78 FR 15410 (March 11, 2013).

- a. Maintenance of Records (§ 153.310(c)(4))
- b. Interim Report and State Summary Report (§ 153.310(d))
- c. General Oversight Requirements for State-Operated Risk Adjustment Programs (§ 153.365)
- 4. Risk Adjustment Methodology
 - a. Modification to the Transfer Formula in the HHS Risk Adjustment Methodology
- 5. Subpart E—Health Insurance Issuer and Group Health Plan Standards Related to the Reinsurance Program
 - a. Reinsurance Contribution Funds (§ 153.400)
- b. Maintenance of Records (§ 153.405(h) and § 153.410(c))
- 6. Subpart F—Health Insurance Issuer Standards Related to the Risk Corridors Program
 - a. Definitions (§ 153.500)
 - b. Calculation of Allowable Costs, Attribution and Allocation of Revenue and Expense Items, and Risk Corridors Data Requirements (§ 153.500, § 153.520, and § 153.530)
- 7. Subpart G—Health Insurance Issuer Standards Related to the Risk Adjustment Program
- 8. Subpart H—Distributed Data Collection for HHS-Operated Programs
 - a. Failure To Comply With HHS-Operated Risk Adjustment and Reinsurance Data Requirements (§ 153.740(a))
 - b. Default Risk Adjustment Charge (§ 153.740(b))
- D. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act
 - 1. Subpart D—Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs
 - a. Administration of Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions (§ 155.340)
 - 2. Subpart E—Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans
 - a. Special Enrollment Periods (§ 155.420)
 - 3. Subpart H—Exchange Functions: Small Business Health Options Program (SHOP)
 - a. Enrollment Periods Under SHOP (§ 155.725)
 - 4. Subpart M—Oversight and Program Integrity Standards for State Exchanges
 - a. General Program Integrity and Oversight Requirements (§ 155.1200)
 - b. Maintenance of Records (§ 155.1210)
- E. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges
 - 1. Subpart A—General Provisions
 - a. Definitions (§ 156.20)
 - b. Single Risk Pool (§ 156.80)
 - 2. Subpart B—Essential Health Benefits Package
 - a. Enrollment in Catastrophic Plans (§ 156.155)
 - 3. Subpart D—Federally-Facilitated Exchange Qualified Health Plan Issuer Standards
 - a. Changes of Ownership of Issuers of Qualified Health Plans in Federally-Facilitated Exchanges (§ 156.330)
 - 4. Subpart E—Health Insurance Issuer Responsibilities With Respect to Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions
 - a. Definitions (§ 156.400)
 - b. Improper Plan Assignment and Application of Cost-Sharing Reductions (§ 156.410(c) Through (d))
 - c. Payment for Cost-Sharing Reductions (§ 156.430)
 - d. Failure To Reduce an Enrollee's Premium To Account for Advance Payments of the Premium Tax Credit (§ 156.460(c))
 - e. Oversight of the Administration of Cost-Sharing Reductions and Advance Payments of the Premium Tax Credit Programs (§ 156.480)
 - 5. Subpart H—Oversight & Financial Integrity Requirements for Issuers of Qualified Health Plans in Federally-Facilitated Exchanges
 - a. Maintenance of Records for Federally-Facilitated Exchanges (§ 156.705)
 - b. Compliance Reviews of QHP Issuers in Federally-Facilitated Exchanges (§ 156.715)
 - 6. Subpart J—Administrative Review of QHP Issuer Sanctions in a Federally-Facilitated Exchange
 - a. Administrative Review in a Federally-Facilitated Exchange (§§ 156.901 Through 156.963)
 - 7. Subpart L—Quality Standards
 - a. Establishment of Standards for HHS-Approved Enrollee Satisfaction Survey Vendors for Use by QHP Issuers in Exchanges (§ 156.1105)
 - 8. Subpart M—Qualified Health Plan Issuer Responsibilities
 - a. Confirmation of HHS Payment and Collections Reports (§ 156.1210)
- III. Collection of Information Requirements
- IV. Regulatory Impact Analysis
- V. Regulations Text

Acronyms and Short Forms

Because of the many organizations and terms to which we refer by acronym in this final rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

Affordable Care Act The collective term for the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152))

ALJ Administrative Law Judge

ARF Allowable Rating Factor

AV Actuarial Value

CAHPS® Consumer Assessment of Healthcare Providers and Systems

CFR Code of Federal Regulations

CMP Civil money penalty

CMS Centers for Medicare & Medicaid Services

DOI State Department of Insurance

DOL U.S. Department of Labor

EHB Essential Health Benefits

FEHB Federal Employees Health Benefits

FFE Federally-facilitated Exchange

FF-SHOP Federally-facilitated Small Business Health Options Program

GAAP Generally accepted accounting principles

GAAS Generally accepted auditing standards

GAGAS Generally accepted governmental auditing standards

GAO U.S. Government Accountability Office

HHS U.S. Department of Health and Human Services

HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191)

IRS Internal Revenue Service

MAGI Modified Adjusted Gross Income

MLR Medical Loss Ratio

NCQA National Committee for Quality Assurance

OIG Office of the Inspector General of the U.S. Department of Health and Human Services

OMB Office of Management and Budget

PHSAct Public Health Service Act

PRA Paperwork Reduction Act

QHP Qualified Health Plan

SHOP Small Business Health Options Program

The Code Internal Revenue Code of 1986

TIN Taxpayer Identification Number

I. Background

A. Legislative Overview

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this final rule, we refer to the two statutes collectively as the “Affordable Care Act.”

Subtitles A and C of Title I of the Affordable Care Act reorganized, amended, and added to the provisions of Title XXVII of the Public Health Service Act (PHS Act) relating to health insurance issuers in the group and individual markets and to group health plans that are non-Federal governmental plans. As relevant here, section 2702 of the PHS Act (guaranteed availability of coverage) directs a health insurance issuer offering non-grandfathered health insurance coverage in the group or individual market in a State to accept every employer and individual in the State who applies for coverage, subject to certain exceptions. Section 2703 of the PHS Act (guaranteed renewability of coverage) requires a health insurance issuer offering non-grandfathered health insurance coverage in the group or individual market to renew or continue in force such coverage at the option of the plan sponsor or individual, subject to certain exceptions.

As of October 2013 for coverage starting as soon as January 1, 2014, qualified individuals and qualified employers will be able to enroll in QHPs—private health insurance that has

been certified as meeting certain standards—through competitive marketplaces called “Exchanges” or “Health Insurance Marketplaces.” The Departments of Health and Human Services, Labor, and the Treasury have been working in close coordination to release guidance related to QHPs and Exchanges in several phases. The word “Exchanges” refers to both State Exchanges, also called State-based Exchanges, and FFEs. In this final rule, we use the terms “State Exchange” or “FFE” when we are referring to a particular type of Exchange. When we refer to “FFE,” we are also referring to State Partnership Exchanges, which are a form of FFE.

In this final rule, we encourage State flexibility within the boundaries of the law. Sections 1311(b) and 1321(b) of the Affordable Care Act provide that each State has the opportunity to establish an Exchange. Section 1311(b)(1) gives each State the opportunity to establish an Exchange that both facilitates the purchase of QHPs and provides for the establishment of a Small Business Health Options Program (SHOP) that will help qualified employers enroll their employees in QHPs.

Section 1302(e) of the Affordable Care Act outlines standards for offering catastrophic plans in the individual market for certain young adults and people who obtain certification of exemption from the requirement to maintain minimum essential coverage because they cannot afford health insurance or experience other hardship.

Section 1311(c)(4) of the Affordable Care Act directs the Secretary to establish an enrollee satisfaction survey system that would evaluate the level of enrollee satisfaction with QHPs offered through an Exchange for each such QHP with more than 500 enrollees in the previous year.

Section 1311(d)(4)(A) of the Affordable Care Act directs that each Exchange must implement procedures for the certification, recertification, and decertification of health plans as QHPs, consistent with guidelines developed by the Secretary.

Section 1311(d)(5)(A) of the Affordable Care Act provides that States, when establishing Exchanges, must ensure that such Exchanges are self-sustaining beginning on January 1, 2015, and permits Exchanges to charge assessments or user fees to participating health insurance issuers to generate funding to support their operations. When operating an FFE under section 1321(c)(1) of the Affordable Care Act, HHS has the authority under sections 1321(c)(1) and 1311(d)(5)(A) to collect and spend such user fees. In addition,

31 U.S.C. 9701 permits a Federal agency to establish a charge for a service provided by the agency. Office of Management and Budget (OMB) Circular A–25 Revised establishes Federal policy regarding user fees and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. Section 1311(d)(5)(B) contains a prohibition on the wasteful use of funds.

Section 1312(c) of the Affordable Care Act directs a health insurance issuer to consider all enrollees in all health plans (other than grandfathered health plans) offered by such issuer to be members of a single risk pool for each of its individual and small group markets. Section 1312(c) of the Affordable Care Act gives States the option to merge the individual and small group markets within the State into a single risk pool (merged market).

Section 1313 of the Affordable Care Act, combined with section 1321 of the Affordable Care Act, provides the Secretary with the authority to oversee financial integrity, compliance with HHS standards, and efficient and non-discriminatory administration of State Exchange activities. Section 1313(a)(6)(A) of the Affordable Care Act specifies that payments made by, through, or in connection with an Exchange are subject to the False Claims Act (31 U.S.C. 3729, et seq.) if those payments include any Federal funds.

Section 1341 of the Affordable Care Act establishes a transitional reinsurance program that begins in 2014 and is designed to provide issuers with greater stability as insurance market reforms are implemented and individuals begin to enroll in QHPs sold through Exchanges. Section 1342 of the Affordable Care Act establishes a temporary risk corridors program which permits the Federal government and QHPs to share in gains or losses resulting from inaccurate rate setting from 2014 through 2016. Section 1343 of the Affordable Care Act establishes a permanent risk adjustment program which is intended to provide payments to health insurance issuers that attract higher-risk populations, such as those with chronic conditions, and eliminate incentives for issuers to avoid higher-risk enrollees.

Section 1321(a)(1) of the Affordable Care Act provides general authority for the Secretary of Health and Human Services (referred to throughout this rule as the Secretary) to establish standards and regulations to implement the statutory requirements related to Exchanges, QHPs, and other

components of Title I of the Affordable Care Act.

Section 1401 of the Affordable Care Act amended the Internal Revenue Code (26 U.S.C.) to add section 36B, allowing a refundable premium tax credit to help individuals and families afford health insurance coverage. Under sections 1401, 1411, and 1412 of the Affordable Care Act and 45 CFR part 155, subpart D, an Exchange will make a determination of advance payments of the premium tax credit for individuals who enroll in QHP coverage through an Exchange and seek financial assistance. Section 1402 of the Affordable Care Act provides for the reduction of cost sharing for certain individuals enrolled in a QHP through an Exchange, and section 1412 of the Affordable Care Act provides for the advance payment of these reductions to issuers.

Under section 1411 of the Affordable Care Act, the Secretary is directed to establish a program for determining whether an individual meets the eligibility standards for Exchange participation, advance payments of the premium tax credit, cost-sharing reductions, and exemptions from the shared responsibility payment under section 5000A of the Code.

Sections 1412 and 1413 of the Affordable Care Act and section 1943 of the Social Security Act (the Act), as added by section 2201 of the Affordable Care Act, contain additional provisions regarding eligibility for advance payments of the premium tax credit and cost-sharing reductions, as well as provisions regarding simplification and coordination of eligibility determinations and enrollment with other health programs.

Unless otherwise specified, the provisions in this final rule related to the establishment of minimum functions of an Exchange are based on the general authority of the Secretary under section 1321(a)(1) of the Affordable Care Act.

B. Stakeholder Consultation and Input

HHS has consulted with stakeholders on a number of policies related to the operation of Exchanges, including the SHOP and premium stabilization programs. HHS has held a number of listening sessions with consumers, providers, employers, health plans, and State representatives to gather public input. HHS consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners; regular contact with States through the Exchange establishment grant process and the Exchange Blueprint approval process; and meetings with tribal leaders and

representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties. We considered all of the public input as we developed the policies in the proposed rule, the interim final rule, and this final rule.

II. Provisions of the Final Regulations and Analysis of and Responses to Public Comments

A proposed rule, titled “Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, Premium Stabilization Programs, and Market Standards” (78 FR 37032), was published in the **Federal Register** on June 19, 2013 with a comment period ending on July 19, 2013. In total, we received approximately 99 public comments from various stakeholders including States, health insurance issuers, consumer groups, agents and brokers, provider groups, Members of Congress, tribal organizations, and other stakeholders. We received a few comments that were outside the scope of the proposed rule. A number of the provisions in the proposed rule were finalized in the final rule published in the **Federal Register** on August 30, 2013, titled “Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, and Eligibility Appeals” (78 FR 54070), hereinafter referred to as the “first Program Integrity final rule.” We are finalizing the remaining provisions of the proposed rule here.

The interim final rule, titled “Patient Protection and Affordable Care Act; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014” (78 FR 15541) was published in the **Federal Register** on March 11, 2013 with a comment period that ended on April 30, 2013. Provisions of this rule align risk corridors calculations with the single risk pool provision, and finalize standards permitting issuers of QHPs the option of using an alternate methodology for calculating the value of cost-sharing reductions provided for the purpose of reconciliation of advance payments of cost-sharing reductions. We received seven comments on the interim final rule from issuers, advocacy organizations, and tribal organizations. We amend standards from the interim final rule and adopt interim provisions as final.

In this final rule, we provide a summary of each proposed or interim provision, a summary of the public comments received and our responses to them, and the provisions we are finalizing. We note that nothing in these regulations would limit the authority of the Office of the Inspector General (OIG)

as set forth by the Inspector General Act of 1978 or other applicable law.

A. Part 144—Requirements Relating to Health Insurance Coverage

1. Subpart A—General Provisions

a. Scope and Applicability (§ 144.102(c))

In § 144.102(c), we proposed a technical amendment to clarify whether coverage sold through associations is group or individual coverage under the PHS Act. Specifically, we proposed to delete a reference to coverage offered in connection with a “group health plan that has fewer than two participants who are current employees on the first day of the plan year” (very small plans) as being individual health insurance coverage under title XXVII of the PHS Act. This correction aligns with the amendments made by the Affordable Care Act redefining a small employer to include groups consisting of only one common law employee.

Comment: Commenters expressed support for the proposed clarification in § 144.102(c).

Response: We are finalizing the regulation as proposed.

Summary of Regulatory Changes

We are finalizing the amendments to § 144.102(c) as proposed.

b. Definitions (§ 144.103)

Under § 144.103, we proposed to amend several definitions of terms that are used throughout parts 146 (group market requirements), 148 (individual market requirements), and 150 (enforcement) of subchapter B of title 45 of the Code of Federal Regulations (CFR), consistent with the Affordable Care Act. These included definitions of “group market,” “individual market,” “large employer,” “policy year,” and “small employer.” Unless otherwise provided, the definitions in § 144.103 also apply for purposes of part 147 (group and individual market insurance reform requirements), and we make this explicit in this final rule.

We noted that, although the Affordable Care Act made changes to the definition of “small employer” for purposes of the PHS Act, the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (the Code) continue to define a “small employer” as having 2 to 50 employees. Similarly, we noted that the Affordable Care Act deleted the exception for very small plans in PHS Act section 2721,⁵ without removing parallel provisions in ERISA section 732(a) and Code section

9831(a)(2). We requested comments on how to interpret the PHS Act, ERISA, and the Code to ensure that shared provisions of the Departments of HHS, Labor, and the Treasury are administered consistently.

Comment: Several commenters were in favor of adopting a consistent definition of “small employer” for purposes of the PHS Act, ERISA, and the Code. Some commenters thought the upper limit of small employer size should be 50 employees consistent with ERISA and the Code, while others suggested an upper limit of 100 employees consistent with the PHS Act and the Affordable Care Act. One commenter requested clarification that, although employers with one common law employee are now treated as small employer groups under the Affordable Care Act, retiree-only plans continue to be exempt from the group market reforms under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Affordable Care Act.

Response: Consistent with section 2791(e)(4) of the PHS Act and section 1304(b) of the Affordable Care Act, in this final rule, we maintain the definition of “small employer,” for purposes of health coverage, as an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. Prior to 2016, States have discretion to set the upper limit of small employer size at 50 employees. Additionally, we conform the definitions of “individual market” and “group market,” as proposed, by removing references to group health plans with fewer than two participants who are current employees from being treated as being in the individual market rather than the group market. In the proposed rule, we noted the change to the law and proposed to make conforming amendments to update our rules to reflect the law with the intention of doing so for all applicable rules. While we inadvertently omitted reference to the exception for certain small group plans in § 146.145(b), we note that we believe that our intention to conform our rules to the law amended by the Affordable Care Act was clear and, accordingly, we make this conforming amendment in this final rule. As we pointed out earlier, identical language exempting group health plans with fewer than two participants from certain provisions of the PHS Act that formerly was in PHS Act section 2721(a) was stricken by the Affordable Care Act. We note that nothing in this final rule

⁵ The Affordable Care Act redesignated section 2721 as section 2722 of the PHS Act.

should be construed as affecting the Departments' position regarding retiree-only plans.⁶

Comment: Several commenters addressed the issue of how employees should be counted in determining employer size. Commenters noted that States use different methods to calculate employer group size and noted that there are also different Federal methods for determining employer size for different purposes. These commenters suggested that there are compelling practical and efficiency reasons to use a consistent counting method for all Affordable Care Act purposes and between Federal and State law.

Response: HHS has previously set forth the method for determining employer size for purposes relating to the Exchange and SHOP regulations based on the full-time equivalent method used in section 4980H(c)(2) of the Code, generally effective for plan years beginning on or after January 1, 2016.⁷ We expect to address the counting method for purposes of the PHS Act in future rulemaking or guidance.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 144.103 of the proposed rule with the following minor modifications for consistency and clarity. We state expressly that the definitions in this section which are based on PHS Act requirements enacted by HIPAA and other statutes (implemented in parts 146, 148, and 150) are equally applicable to PHS Act requirements enacted by the Affordable Care Act (implemented in part 147). In the proposed definition of "policy year," we replace the reference to January 1, 2015 with the phrase, "for coverage issued or renewed beginning January 1, 2014," to clarify the definition's applicability to calendar year plans, as discussed in connection with § 147.104(b)(2) of this final rule. Finally, we remove the exception for certain small group health plans in § 146.145(b) to conform to the amendments in § 144.102 and § 144.103 of this final rule.

B. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

1. Guaranteed Availability and Renewability of Coverage (§ 147.104 and § 147.106)

In the proposed rule, we proposed to recognize the distinction of the large group and small group segments of the group market for purposes of sections 2702 and 2703 of the PHS Act, as amended by the Affordable Care Act, and their implementing regulations at 45 CFR 147.104 and 147.106, respectively. These proposed amendments would clarify that under the guaranteed availability provisions, an issuer is required to offer to an employer only those products that are approved for sale in the applicable market segment (large group or small group market) based on the employer's group size (rather than all group market products). The proposed amendments would also clarify that under the guaranteed renewability provisions, an issuer could, in accordance with applicable State law and subject to the other requirements of § 147.106(d), elect to discontinue all products in one segment of the group market (for example, the large group market) without having to discontinue all products in the other segment of the group market (for example, small group market).⁸

We also proposed to clarify in § 147.104(b)(2) that all non-grandfathered coverage in the individual or merged market must be offered on a calendar year basis as of January 1, 2015. We specified that, for purposes of new enrollment effective on any date other than January 1, the first policy year following such enrollment may comprise a prorated policy year ending on December 31.

Comment: Commenters generally expressed support for the proposed revisions in § 147.104 and § 147.106. However, one commenter disagreed with proposed § 147.104(b)(2), in which all non-grandfathered individual or merged market plans would be offered on a calendar year basis. The commenter suggested that individuals with non-calendar year plans should be permitted to maintain their plans' current renewal date.

Response: We seek consistency between the Exchange and non-Exchange markets to mitigate adverse

selection, reduce consumer confusion, and ensure compliance with the single risk pool requirements. For these reasons, in the Market Reform Rule at § 147.104(b), we aligned individual market open enrollment periods and coverage effective dates with those in the individual market Exchanges (which are based on a calendar policy year) and, to facilitate the transition to calendar policy years, established a one-time enrollment period allowing individuals with non-calendar year plans the opportunity to enroll in a calendar year plan upon renewal in 2014. This final rule simply affirms the intent of the Market Reform Rule and does not represent a change in policy. We reiterate that, for purposes of new enrollment effective on any date other than January 1, the first policy year following such enrollment may comprise a prorated policy year ending on December 31 of that year.

Comment: A few commenters sought clarification on whether an issuer is required to renew coverage purchased by an employer whose size shifts between the small and large group markets.

Response: HHS has previously issued guidance on how the guaranteed renewability requirement applies to employers whose size shifts between the small and large group markets after purchasing coverage in one or the other of these markets.⁹ The general rule set forth in section 2703 of the PHS Act and its implementing regulations at § 147.106 makes clear that a health insurance issuer must guarantee the renewal of coverage at the option of the plan sponsor. The exceptions to this rule do not include the situation in which the employer that sponsors the group health plan grows from a small employer to a large employer, or the reverse, between the time the policy is purchased and the time it comes up for renewal. Therefore, the law guarantees the employer the right to renew or continue in force the coverage it purchased in the small (or large) group market even though the employer ceases to be a small (or large) employer by reason of an increase (or decrease) in its number of employees.

For example, an employer that originally purchased coverage in the small group market and that increases in size beyond the definition of a small employer has the option of keeping the product it purchased in the small group market. Furthermore, any changes to

⁶ Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act, 75 FR at 34539–40 (June 17, 2010).

⁷ For operations of a Federally-facilitated SHOP, the method set forth in section 4980H(c)(2) of the Code is effective for plan years beginning on or after January 1, 2014, including in connection with open enrollment activities beginning October 1, 2013.

⁸ These clarifications were consistent with the information we provided in "Frequently Asked Questions on Health Insurance Marketplaces" (May 14, 2013). Available at: <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/marketplace-faq-5-14-2013.pdf>.

⁹ HCFA Insurance Standards Bulletin Series No. 99–03 (September 1999). Available at: <https://www.cms.gov/HealthInsReformforConsume/downloads/HIPAA-99-03.pdf>.

that product must satisfy the uniform modification of coverage requirements set forth in section 2703(d) of the PHS Act and § 147.106(e). Under these provisions, an issuer is permitted at the time of renewal to modify the coverage for that product, but only if the modification is consistent with State law and effective uniformly to all employers with that product. Thus, if other employers with that product were still participating in the small group market, the issuer could not modify the benefits or cost sharing for the product in a manner inconsistent with the rules that apply to small group coverage. We note that under this scenario, if the employer drops coverage it purchased in the small group market, it will not be able to purchase the same coverage again if it no longer meets the definition of a small employer.

The requirements of guaranteed renewability do not change the underlying employer group's size for other provisions of the PHS Act and the Affordable Care Act. For example, the premium rating rules (PHS Act section 2701 and implementing regulations at § 147.102) and the single risk pool provision (Affordable Care Act section 1312(c) and implementing regulations at § 156.80) apply to health insurance coverage in the individual and small group markets, but generally do not apply to health insurance coverage in the large group market.¹⁰ These provisions of Federal law generally would not therefore apply where an employer increases in size to become a large employer, even if the employer is renewing a product originally purchased in the small group market.¹¹

Summary of Regulatory Changes

We are finalizing these provisions with the following minor modification.

¹⁰ Beginning in 2017, States will have the option to allow issuers to offer QHPs in the large group market through the SHOP. If a State elects this option, the rating rules under PHS Act section 2701 will apply to all coverage offered in such State's large group market (except for self-insured group health plans) pursuant to section 2701(a)(5) of the PHS Act and § 147.102(f).

¹¹ However, pursuant to section 1304(b)(4)(D) of the Affordable Care Act, a qualified employer that is a small employer participating in the SHOP may continue to participate in the SHOP, and will continue to be treated as a small employer for purposes of subtitle D of the Affordable Care Act, even if the employer ceases to be a small employer by reason of an increase in its number of employees. Subtitle D includes the provisions governing SHOP Exchanges, EHB, the single risk pool, and the premium stabilization programs but not premium rating requirements under section 2701 of the PHS Act. We intend to propose in future rulemaking how plans that are sold through the SHOP to employers that grow from small to large will be required to comply with single risk pool and premium rating requirements and how these plans, therefore, participate in the risk corridors programs.

In § 147.104(b)(2), we remove the reference to January 1, 2015 to avoid unwarranted confusion as to when non-grandfathered plans in the individual or merged market must be offered on a calendar year basis. Pursuant to § 147.104(f), all non-grandfathered individual and merged market coverage issued or renewed on or after January 1, 2014 must be offered on a calendar year basis, with a policy year ending on December 31 of each year and the next policy year beginning on January 1 of the following year. The proposed rule included January 1, 2015 as the latest date by which a non-calendar year plan renewing in 2014 (i.e., a plan renewing on December 31, 2014) would be subject to this requirement. We believe the proposed text may have been subject to unintended ambiguity and are finalizing revised text to eliminate that concern.

C. Part 153—Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment Under the Affordable Care Act

In the proposed rule, we proposed certain provisions related to program integrity for State-operated risk adjustment and reinsurance programs, including provisions governing reporting requirements and restricting the use of reinsurance funds for administrative expenses. In addition, we proposed record retention standards for States operating risk adjustment, for contributing entities, and for reinsurance-eligible plans when HHS operates reinsurance on behalf of a State. We intend to propose additional standards related to the oversight of the premium stabilization programs in future regulations and guidance.

We also note that, to alleviate the upfront burden of the reinsurance contributions, we intend to propose in future rulemaking to collect reinsurance contributions in two installments—the reinsurance contributions for reinsurance payments and administrative expenses would be collected at the beginning of the calendar year following the applicable benefit year, and the contributions for payments to the U.S. Treasury would be collected at the end of the calendar year following the applicable benefit year. We also intend to propose in future rulemaking to exempt certain self-insured, self-administered plans from the requirement to make reinsurance contributions for the 2015 and 2016 benefit years.

1. Subpart A—General Provisions

a. Definitions (§ 153.20)

We proposed an amendment to the definition of a “contributing entity” to address a situation in which the healthcare coverage provided to a participant under a group health plan is partially insured and partially self-insured—for example, if medical benefits are provided under a self-insured arrangement but prescription drug benefits are provided under an insured arrangement. We proposed this amendment to clarify that, for purposes of determining whether an entity bears liability for reinsurance contributions, a self-insured group health plan includes a group health plan that is partially self-insured and partially insured, but only where the insured coverage does not constitute major medical coverage (whether or not the self-insured coverage is major medical coverage). This amendment clarifies that if a group health plan is structured in such a manner, the group health plan would be liable for reinsurance contributions under the counting rules applicable to self-insured group health plans at 45 CFR 153.405(f), but if the insured component of the group health plan is major medical coverage, the issuer remains liable for the contributions.

We also sought comment on whether we should adopt a definition for “major medical coverage” that would provide additional clarity on when a contributing entity would have the responsibility to make reinsurance contributions.

Comment: Several commenters supported the proposed amendment. One commenter sought clarification as to which party is liable for reinsurance contributions with respect to a group health plan that is partially self-insured and partially insured when both forms of coverage are major medical coverage. The commenter recommended that the issuer be liable for reinsurance contributions in a situation in which the in-network coverage is insured, because the insured in-network coverage would account for the majority of the total health coverage for the covered individuals.

Response: We clarify that the amendment to the definition of “contributing entity” does not alter the responsibility of the issuer for the reinsurance contributions under these facts. The amendment to the definition of “contributing entity” addresses a scenario in which a self-insured plan includes insured coverage that is *not* major medical coverage; however, the fact pattern described above concerns a self-insured plan that includes insured

major medical coverage. Under § 153.400(a)(1)(i) and § 153.20, an issuer that offers major medical coverage to its covered lives is a “contributing entity,” and is responsible for reinsurance contributions for the covered lives, and under these facts the self-insured plan under this proposed amendment would not be a contributing entity because the insured component of the plan is major medical coverage.

Comment: Certain commenters requested that HHS codify a definition of major medical coverage for purposes of reinsurance contributions. One commenter asked HHS to codify in regulation text the definition of major medical coverage set forth in the preamble to the 2014 Payment Notice (78 FR at 15456), while continuing to carefully examine this issue to determine if the definition should be revised, expanded, or made more specific in the future. One commenter asked HHS to include in a definition of “major medical coverage” the set of health benefits defined in the American Academy of Pediatrics’ *Scope of Health Care Benefits for Children from Birth through Age 26*.

Response: We agree that a more specific definition of “major medical coverage” for purposes of reinsurance contributions would add certainty for some contributing entities. We therefore intend to propose a specific definition in the HHS Notice of Benefit and Payment Parameters for 2015.

Summary of Regulatory Changes

We are finalizing the amendment to the definition of “contributing entity” as proposed.

2. Subpart C—State Standards Related to the Reinsurance Program

a. Maintenance of Records (§ 153.240(c))

We proposed to amend 45 CFR 153.240(c) to be consistent with the maintenance of records requirement for State-operated risk adjustment programs proposed in § 153.310(c)(4). We proposed to amend § 153.240(c) such that a State establishing a reinsurance program would be directed to maintain documents and records relating to the reinsurance program, whether paper, electronic, or in other media, for each benefit year for at least 10 years, and make them available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity. The documents and records must be sufficient to enable HHS to evaluate whether the State-operated reinsurance program complies with Federal standards. States would also be directed to ensure that their contractors,

subcontractors, and agents similarly maintain and make relevant documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees.

Comment: Several commenters asked that HHS reduce the 10-year record retention standard, while other commenters supported the 10-year retention timeframe. One commenter suggested that a 10-year record retention standard is not needed for the False Claims Act.

Response: We are finalizing the maintenance of records provisions as proposed, in alignment with the statute of limitations for the False Claims Act and existing related regulations. A civil action may be brought under the False Claims Act “no more than 10 years after the date on which the violation is committed.” Additionally, similar 10-year record retention standards were previously finalized in the Exchange Establishment Rule and the Premium Stabilization Rule. We believe that maintaining consistency in our record retention standards will help ensure that entities maintain records across programs in a consistent manner, allowing HHS and States to coordinate oversight efforts across those program areas and reduce the burden on stakeholders. We note that the 10-year obligation to retain records begins when the record is created.

Comment: One commenter recommended that electronic maintenance of records should satisfy the maintenance of records standard.

Response: An entity subject to the maintenance of records standard may satisfy the standard by maintaining the records electronically and ensuring that they are accessible if needed in the event of an investigation, audit, or other review.

Comment: Several commenters asked HHS to provide details on the specific documents and records that States, contributing entities or issuers would be required to maintain for oversight purposes. In particular, one commenter suggested that issuers should not be required to retain medical records in connection with the risk adjustment program.

Response: We will provide further details on the documents and records to be maintained in future guidance or rulemaking. Because risk adjustment-eligible claims, medical documents, and medical records will be subject to medical record review as part of the risk adjustment data validation process, issuers of risk adjustment covered plans must maintain these documents. We note that this record maintenance and medical record review is subject to

applicable privacy law, including the protections of HIPAA.

Comment: One commenter asked that HHS reserve the authority to use the documents and records maintained pursuant to these provisions to verify whether issuers are in compliance with certain other requirements under the Affordable Care Act. For example, these documents and records could be used to help determine whether issuers are in compliance with the single risk pool premium rating requirement.

Response: We do not intend to use the documents and records maintained pursuant to these provisions for purposes other than monitoring compliance with the applicable statutes and regulations for those programs. In general, primary enforcement jurisdiction over the single risk pool premium rating requirement lies with the States.

Summary of Regulatory Changes

We are finalizing the maintenance of records provision set forth in § 153.240(c) as proposed, as well as the maintenance of records provisions set forth in § 153.310(c)(4). We are also finalizing the maintenance of records provision set forth in § 153.405(h), § 153.410(c) and § 153.620(b) with conforming technical corrections. In these provisions, to conform with our other record retention standards in this rule, we are clarifying that in each provision it is the “documents and records” that must be made available upon request. In § 153.620(b), we clarify that records must be maintained for 10 years. Finally, we are making a conforming amendment to § 153.520(e) so that the risk corridors recordkeeping requirement is consistent with the foregoing provisions. Section 153.520(e) will read: “A QHP issuer must maintain documents and records whether paper, electronic, or in other media, sufficient to enable the evaluation of the issuer’s compliance with applicable risk corridors standards, for each benefit year for at least 10 years, and must make those documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity, for purposes of verification, investigation, audit or other review.”

b. General Oversight Requirements for State-Operated Reinsurance Programs (§ 153.260)

HHS expects that States will operate the reinsurance program under section 1341 of the Affordable Care Act in an effective and efficient manner and in accordance with the provisions of subparts B and C of 45 CFR part 153.

Therefore, pursuant to our authority under sections 1321(a)(1) and 1341 of the Affordable Care Act, we proposed certain general oversight requirements for State-operated reinsurance programs. In § 153.260(a), we proposed that a State establishing the reinsurance program ensure that its applicable reinsurance entity keeps, for each benefit year, an accounting of the following: (1) All reinsurance contributions received from HHS for reinsurance payments and for administrative expenses; (2) all claims for reinsurance payments received from issuers of reinsurance-eligible plans; (3) all reinsurance payments made to issuers of reinsurance-eligible plans; and (4) all administrative expenses incurred for the State's reinsurance program. We proposed to require that this accounting be kept in accordance with GAAP, consistently applied.

In § 153.260(b), we proposed that a State that establishes the reinsurance program submit to HHS and make public a summary report on its reinsurance program operations for each benefit year. This report would include a summary of the accounting for the benefit year as set forth in proposed § 153.260(a).

In § 153.260(c), we proposed that a State that establishes the reinsurance program engage an independent qualified auditing entity to perform a financial and programmatic audit of the program for each benefit year in accordance with GAAS. Pursuant to § 153.260(c)(2), the State would be directed to ensure that this audit addresses the prohibitions set forth in § 153.265 (concerning improper use of reinsurance funds for administrative expenses).

In paragraph (c)(1), we proposed that the State provide to HHS the results of the independent external audit for each benefit year, and in paragraph (c)(3), we proposed that the State identify to HHS any material weakness or significant deficiency identified in the audit (as these terms are defined in GAAS issued by the American Institute of Certified Public Accountants, and Government Auditing Standards issued by the Government Accountability Office (GAO)¹²). We further proposed that the State address in writing to HHS how the State intends to correct any such material weakness or significant

deficiency. To ensure transparency and accountability of a State-operated reinsurance program's finances and activities, we proposed in paragraph (c)(4) that the State make public a summary of the results of the external audit, including any material weakness or significant deficiency. We believe that these measures are necessary to ensure the proper use of reinsurance contributions under the uniform contribution rate, which HHS will collect from all contributing entities pursuant to 45 CFR 153.220. We received several comments supporting these provisions.

Summary of Regulatory Changes

We are finalizing these provisions as proposed. We are finalizing these provisions with one modification. We are clarifying in paragraph (c)(4) that in making public any material weakness or significant deficiency from the external audit, the State must also make public how it intends to correct the material weakness or significant deficiency.

Summary of Regulatory Changes

We are finalizing these provisions with one modification. We are clarifying that when the State makes public a summary of the results of the external audit, including any material weakness or significant deficiency, it must also make public how it intends to correct the material weakness or significant deficiency, in the manner and timeframe to be specified by HHS.

c. Restrictions on Use of Reinsurance Funds for Administrative Expenses (§ 153.265)

To achieve the intended purpose of the reinsurance program, reinsurance contributions collected must be spent on reinsurance payments, payments to the U.S. Treasury, and on reasonable expenses to administer the reinsurance program. In § 153.260(a), we proposed that a State operating reinsurance would be directed to keep an accurate accounting of the reinsurance funds received from HHS for administrative expenses and all the administrative expenses incurred for the State-operated reinsurance program. If a State incurs fewer expenses in operating reinsurance for a benefit year than are allocated to it under the uniform reinsurance contribution rate the State would be directed to use those funds to operate reinsurance in subsequent benefit years.

Section 1311(d)(5)(B) of the Affordable Care Act prohibits an Exchange from using any funds intended for the administrative and operational expenses of the Exchange for staff retreats, promotional giveaways,

excessive executive compensation, or the promotion of Federal or State legislative and regulatory modifications. In § 153.265, we proposed to extend these prohibitions to State-operated reinsurance programs, so that a State establishing a reinsurance program would be directed to ensure that its applicable reinsurance entity did not use funds that were intended to support reinsurance program operations (including any reinsurance contributions collected under the national contribution rate for administrative expenses) for any purpose prohibited in section 1311(d)(5)(B) of the Affordable Care Act. We received comments supporting this provision.

Summary of Regulatory Changes

We are finalizing this provision as proposed.

3. Subpart D—State Standards Related to the Risk Adjustment Program

In the first Program Integrity final rule (78 FR 54070), we revised the definition of "Exchange" in § 155.20 and amended various other provisions of Part 155 to permit a State to establish and operate only a State-based SHOP while the individual market Exchange for the State is established and operated as an FFE. Because § 153.310(a)(1) provides that a State that elects to operate an Exchange is eligible to establish a risk adjustment program, when proposing these amendments, we sought comment on whether a State that elects to establish and operate a SHOP but not an individual market Exchange should also be eligible to establish a risk adjustment program. Additionally, we sought comment on whether such a State would be eligible to establish a risk adjustment program only for the small group market or would be required to establish the program for both markets. All these amendments were finalized in the first Program Integrity final rule, and we are not re-proposing or finalizing any of them in this rulemaking. However, we elected to address the comments we received on the risk adjustment options for States electing to establish and operate only a SHOP in the preamble to this final rule, rather than in the preamble to the first Program Integrity final rule.

Comment: Several commenters asked that HHS permit a State that is operating a SHOP-only Exchange to operate a risk adjustment program for both the small group market and the individual market. One commenter opposed permitting a State that elects to operate a SHOP-only Exchange to establish a risk adjustment program only in the small group market.

¹² See, Government Auditing Standards (2011 Revision), available at: <http://www.gao.gov/yellowbook>. For public companies, the Public Company Accounting Oversight Board (PCAOB) sets audit standards. See, <http://pcaobus.org/Standards/Auditing/Pages/default.aspx>. For non-public companies, the AICPA sets audit standards. See, <http://www.aicpa.org/Research/Standards/AuditAttest/Pages/SAS.aspx>.

Several commenters stated that restricting a State's ability to operate risk adjustment to the small group market could deprive the State of economies of scale, add compliance burdens to issuers who operate in both markets, and add complexity to operational requirements such as data collection and reporting.

Response: For 2015 and later years, HHS will permit a State operating a SHOP-only Exchange to propose an alternate risk adjustment methodology that covers both the individual and small group markets, and to apply for approval to operate a risk adjustment program in both markets. HHS will evaluate the proposed alternate risk adjustment methodology using the same alternate risk adjustment methodology certification process set forth in the Premium Stabilization Rule and 2014 Payment Notice, in accordance with the standards set forth in 45 CFR 153.330(b), to ensure that it appropriately addresses risk selection in both markets, and will evaluate the State's application to operate risk adjustment in accordance with the standards set forth in 45 CFR 153.310(d) to ensure the State is ready to operate risk adjustment in both markets. We emphasize that this policy does not alter the definition of "Exchange" or any of the other amendments to provide States with the option of establishing and operating only a SHOP Exchange that we finalized in the first Program Integrity final rule.

a. Maintenance of Records (§ 153.310(c)(4))

In § 153.310(c)(4), we proposed that a State operating a risk adjustment program would be directed to maintain documents and records relating to the risk adjustment program, whether paper, electronic, or in other media, for each benefit year for at least 10 years, and make them available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity. The documents and records must be sufficient to enable the evaluation of a State-operated risk adjustment program's compliance with Federal standards. States would also be directed to ensure that their contractors, subcontractors, and agents maintain and make those documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees. We noted that a State may satisfy this standard by archiving these documents and records and ensuring that they are accessible if needed in the event of an investigation, audit, or other review. This provision is consistent with the requirements set forth in

§ 153.240(c), which contains record retention standards for State-operated reinsurance programs. We note that the 10-year obligation to retain records begins when the record is created.

We addressed the comments received on the proposed maintenance of records provisions in the preamble discussion of § 153.240(c) above. Below we address a comment specific to this provision.

Comment: One commenter asked HHS to amend this standard to provide that these documents and records be made available to the State validation auditor as well as HHS, the OIG, the Comptroller General, or their designees.

Response: We are not making this amendment because risk adjustment data validation validates the records of an issuer, not the records of the State entity operating risk adjustment. Thus, a State validation auditor should not need to review the State risk adjustment entity's documents.

Summary of Regulatory Changes

We are finalizing this provision as proposed.

b. Interim Report and State Summary Report (§ 153.310(d))

In § 153.310(d)(3), we proposed that, in addition to the requirements set forth in 45 CFR 153.310(d)(1) and (d)(2), a State would be directed to provide to HHS an interim report, in a manner specified by HHS, that includes a detailed summary of its risk adjustment activities in the first 10 months of the benefit year in order to obtain re-approval from HHS to operate risk adjustment for a third benefit year.¹³ This report would be due no later than December 31 of the first benefit year for which a State operates risk adjustment. We note that because the process for obtaining re-approval to operate risk adjustment begins more than one year before the beginning of the applicable benefit year, the first benefit year for which an interim report based on the first year's operations could be used for approval purposes is the third benefit year.

We proposed to amend 45 CFR 153.310(f) and re-designate it as § 153.310(d)(4). In § 153.310(d)(4), we

¹³ In the 2014 Payment Notice, we finalized a process for approving the operational aspects of a State's risk adjustment program. This process is distinct from the previously established process through which a State may obtain Federal certification of an alternate risk adjustment methodology. In an attempt to clarify these two related but distinct concepts, we have made minor technical corrections to ensure that the terms "approval" and "re-approval" refer to HHS's evaluation of a State's risk adjustment operations and the terms "certification" and "recertification" refer to our evaluation of a proposed alternate risk adjustment methodology.

proposed that in order to obtain re-approval from HHS to operate risk adjustment for each benefit year after the third benefit year for which it is approved, each State operating a risk adjustment program would be directed to submit to HHS and make public a detailed summary of risk adjustment program operations for the most recent benefit year for which risk adjustment operations have been completed, in the manner and timeframe specified by HHS. We proposed that the summary report must include the results of a programmatic and financial audit for the benefit year of the State-operated risk adjustment program conducted by an independent qualified auditing entity in accordance with GAAS. In § 153.310(d)(4)(ii), we proposed that the summary report would identify to HHS any material weakness or significant deficiency (as these terms are defined in GAAS issued by the American Institute of Certified Public Accountants, and Government Auditing Standards issued by the GAO¹⁴) identified in the independent external audit and address in writing to HHS how the State intends to correct any such material weakness or significant deficiency.

We are finalizing these provisions with minor changes in paragraph (d)(4)(ii). We are deleting references in that paragraph to HHS to make clear that any material weakness or significant deficiency identified in the audit, including the methods the State intends to use to correct any such material weakness or significant deficiency, must be made public, and not only provided to HHS.

Comment: One commenter asked HHS to clarify its expectations for the interim report and summary report, and the programmatic components HHS anticipates a State would report through audit findings.

Response: The interim report will help HHS verify the ongoing implementation of the risk adjustment program and review concerns identified by HHS or stakeholders (for example, we may request more information on the State's oversight plan). We will expect the State to report to HHS regarding the State's implementation of the processes outlined in the State's application for certification of its alternate risk adjustment methodology (or

¹⁴ See, Government Auditing Standards (2011 Revision), available at: <http://www.gao.gov/yellowbook>. For public companies, the Public Company Accounting Oversight Board (PCAOB) sets audit standards. See, <http://pcaobus.org/Standards/Auditing/Pages/default.aspx>. For non-public companies, the AICPA sets audit standards. See, <http://www.aicpa.org/Research/Standards/AuditAttest/Pages/SAS.aspx>.

recertification), if applicable, and its application for approval of its operations.

We expect that the summary report will include a review of the State-operated program's operations over a benefit year, including the State's implementation of the risk adjustment methodology over a full payment transfer cycle. A full year of risk adjustment operations will extend beyond a benefit year because payment transfers are not determined until the year following the applicable benefit year. Therefore, the State will not need to submit this summary report until after the end of the benefit year, upon completion of the full payment transfer cycle. We will provide further details on the risk adjustment interim and summary reports in future guidance.

Comment: One commenter asked HHS to permit State flexibility in reporting, and asked that re-approval be based on an assessment of a State's success in meeting the goals specific to its risk adjustment program.

Response: We anticipate that we will require standardized reporting of certain metrics, but that a State will be able to focus on the specific characteristics of the State's risk adjustment program within the report.

Comment: One commenter asked whether the summary report in § 153.310(d)(4) will also be required at the conclusion of the first benefit year and whether an interim report would be required at any time after the first benefit year.

Response: As required by § 153.310(d)(4), each State operating a risk adjustment program is required to submit to HHS an annual summary of risk adjustment program operations in the manner and timeframe specified by HHS. The summary report will be required after the conclusion of the first benefit year's risk adjustment operations (and after the conclusion of each later benefit year's risk adjustment operations), including the completion of the payment transfer cycle. However, an interim report will be required only for the first benefit year.

Comment: One commenter asked whether the interim report must include an independent external audit.

Response: An independent external audit will not be required for the interim report.

Comment: One commenter asked how HHS will review a State-operated risk adjustment program's operations in the second year of operation, including whether any additional information will be required during the second year of operation.

Response: Only a summary report, as required by § 153.310(d)(4), will be required for the second year of operation. We are requiring an interim report for the first year of operations to inform HHS re-approval for a third benefit year of operation because we will not yet have access to any summary reports covering a full year at the time of re-approval. For example, a State operating risk adjustment in 2014 would submit an interim report no later than December 31, 2014. HHS would use the information provided in this interim report to determine if the State will be re-approved to operate risk adjustment for the 2016 benefit year. We would indicate this re-approval in the HHS Notice of Benefit and Payment Parameters for 2016, which is published in 2015.

Comment: One commenter supported the requirement that a State-operated risk adjustment program submit summary reports, and recommended that the summary report include an analysis of coding intensity trends.

Response: We will not require a State operating risk adjustment to include an analysis of coding intensity trends in the State's summary report. However, a State may choose to review this information as part of the State's oversight strategy.

Summary of Regulatory Changes

We are finalizing these provisions with minor changes. We are deleting references to HHS in paragraph (d)(4)(ii) to make clear that any material weakness or significant deficiency identified in the audit, including the methods the State intends to use to correct any such material weakness or significant deficiency, must be made public, and not only provided to HHS. We are also including minor conforming changes so that references to "certification" and "recertification" in connection with the evaluation of a State's operation of risk adjustment are changed to references to "approval" and "re-approval."

c. General Oversight Requirements for State-Operated Risk Adjustment Programs (§ 153.365)

To enable HHS to re-approve States to operate risk adjustment pursuant to 45 CFR 153.310(d), HHS proposed in § 153.365 that a State operating a risk adjustment program keep an accounting of all receipts and expenditures related to risk adjustment payments and charges and the administration of risk adjustment-related functions and activities for each benefit year. This accounting would be kept in accordance with GAAP, and would apply

consistently to all risk adjustment-related activities. This standard is similar to the standard proposed at § 153.260(a), which applies to the reinsurance program when operated by a State. We received no comment on this proposed provision.

Summary of Regulatory Changes

We are finalizing this provision as proposed.

4. Risk Adjustment Methodology

a. Modification to the Transfer Formula in the HHS Risk Adjustment Methodology (78 FR at 15430–34)

In the 2014 Payment Notice (78 FR at 15430–34), we noted our intent to modify the risk adjustment payment transfer formula in order to accommodate community rated States that utilize family tiering rating factors. In non-family tiering States, family policy premiums must be developed by adding up the applicable rates of each individual covered under the policy, as required under 45 CFR 147.102(c)(1). In the case of families with more than three children in non-family tiering States, only the applicable rates of the three oldest covered children under age 21 are counted towards the family policy premium rate (for example, for a family with four children under age 21, only the applicable individual rates of the three oldest children would count towards the family policy premium). These family rating requirements do not apply to States that use family tiering rating factors. In family tiering States, family tiering rating factors are not required to yield premiums that are equal to the sum of the individual policy members' applicable rates, nor must they be set in a way that counts only the rates of the oldest three children under age 21 within a family policy. For example, a family tiering State could establish a family tiering rating factor of 1.0 for an adult policy, 1.8 for a policy covering one adult and one or more children, 2.0 for a policy covering two adults, and 2.8 for a policy covering two adults and one or more children.

In order to account for the differences in family rating practices between family tiering States and non-family tiering States, we proposed two changes to the risk adjustment payment transfer formula that HHS will use when operating risk adjustment on behalf of a State. These changes would only apply to States that are using family tiering rating structures. In the 2014 Payment Notice, we stated that billable members exclude children who do not count towards family rates (that is, children

who do not count toward family policy premiums are excluded) (78 FR at 15432, 15434). We proposed to clarify that in the case of family tiering States, billable members would be based on the number of children that implicitly count towards the premium under a State's family rating factors. For example, assume a State has the following four family tiers: One adult; one adult plus one or more children; two adults; and two adults plus one or more children. Under this tiering structure, only one child would be counted as a billable member in the payment transfer formula, because additional children covered under a family policy would not affect the policy's premium.

Additionally, we proposed a modification to the allowable rating factor (ARF) formula that would be used for family tiering States. In the 2014 Payment Notice (78 FR at 15433), the ARF is calculated as the member month weighted average of the age factor applied to each billable enrollee. In non-family tiering States, the ARF is intended to measure the extent to which plans are increasing or decreasing their premiums based on allowable age rating factors. In the case of family tiering States, premium revenue will not vary by age-specific rating factors. Rather, policy level premiums will vary only based on the family tiering factors. In order to capture the impact of the family tiering factors on plans' premium revenue we proposed that the ARF formula for family tiering States be based on the family tiering factors instead of age rating factors.

Specifically, under our proposal, the ARF for family tiering States would be calculated at the level of the subscriber, as follows:

$$ARF_i = \frac{\sum (ARF_s - M_s)}{\sum M_s}$$

Where:

ARF_s is the rating factor for the subscriber(s) (based on family size/composition), and M_s is the number of billed person-months that are counted in determining the subscriber(s) premium.

We noted that, apart from the changes to the billable member months definition and the ARF formula discussed above, payment transfers in family tiering States will be calculated using the formulas provided in the 2014 Payment Notice (78 FR at 15431–34). The changes to the billable member month definition and the ARF formula would not apply to States that do not implement family tiering rating factors.

Comment: Several commenters supported the proposed modification to the payment transfer formula for a

family tiering State, agreeing with the proposal to base billable members on the number of children that implicitly count towards the premium under the State's family rating factors. These commenters also supported modifying the ARF formula to address rating limitations based on the family tiering factors instead of the age rating factors. However, these commenters asked that the ARF formula be modified to make the numerator a summation over all subscribers of the product of the family tiering factor and the subscriber member months, and the denominator the sum of billable member months.

Response: We agree with the commenters that the ARF formula should be modified so that the numerator is a summation over all subscribers of the product of the family tiering factor and the subscriber member months, and the denominator the sum of billable member months. We are making this technical correction so that the ARF formula accurately reflects a member month weighted average of the family tiering factor, as described in the preamble to the proposed rule (78 FR at 37039–040). Because of a typographical error, the formula did not align with this proposal. We are correcting the formula to align with our proposal, which we are finalizing in this final rule. Therefore, the ARF for family tiering States would be calculated at the level of the subscriber, as follows:

$$ARF_i = \frac{\sum (ARF_s \cdot M_s)}{\sum M_s}$$

Where:

ARF_s is the rating factor for the subscriber(s) (based on family size/composition), and M_s is the number of billed person-months that are counted in determining the premium(s) for the subscriber(s).

Summary of Regulatory Changes

We are finalizing the two proposed modifications to the risk adjustment payment transfer formula as proposed, with one technical correction. We are modifying the ARF formula by making the numerator a summation over all subscribers of the product of the family tiering factor and the subscriber member months, and the denominator the sum of billable member months.

5. Subpart E—Health Insurance Issuer and Group Health Plan Standards Related to the Reinsurance Program

a. Reinsurance Contribution Funds (§ 153.400)

In some health coverage arrangements, an insured group health plan may provide benefits through more than one policy to the same covered

lives, where each policy standing alone does not constitute major medical coverage, but the total benefits do.¹⁵ To clarify the application of the rules (solely for the purpose of reinsurance contributions), we proposed to amend paragraph (a)(1)(i) of 45 CFR 153.400(a) and add a new paragraph (a)(3) that would address liability for reinsurance contributions in the foregoing fact pattern. This paragraph (a)(3) would be an exception to the rule under paragraph (a)(1)(i), which provides that an issuer of health insurance coverage is not required to make reinsurance contributions for coverage to the extent the coverage is not major medical coverage.

Under the proposed paragraph (a)(3), a health insurance issuer providing coverage under a group health plan would make reinsurance contributions for lives under its health insurance coverage even if the insurance coverage does not constitute major medical coverage, if: (i) The group health plan provides health insurance coverage for the same covered lives through more than one insurance policy that in combination constitute major medical coverage but individually do not; (ii) the lives are not covered by self-insured coverage of the group health plan (except for self-insured coverage limited to excepted benefits); and (iii) the health insurance coverage under the policy offered by the health insurance issuer represents a percentage of the total health insurance coverage offered in combination by the group health plan greater than the percentage offered under any of the other policies. We further proposed that for purposes of paragraph (a)(3), the percentage of coverage offered under various policies would be determined based on the average premium per covered life for these policies. In the event that the percentage of coverage is equal, the issuer of the policy that provides the greatest portion of in-network hospitalization benefits would be responsible for reinsurance contributions.

Because an issuer of group health insurance coverage that does not, by itself, constitute major medical coverage may not be aware of the existence of, or premium for, other health insurance coverage obtained by a plan sponsor covering the same lives under a group health plan, we sought comment on whether and in what circumstances an

¹⁵ We note that, after 2014, such arrangements generally would only be permissible in the large employer group context, because issuers of small employer group market insurance coverage are required to provide all EHB under any policy they offer that does not qualify as "excepted benefits."

issuer should be entitled to rely upon representations from a plan sponsor regarding the relative percentage of coverage offered by the issuer. We also sought comment on what other means we should consider for ensuring that the relevant issuer knows of its obligation to make the reinsurance contributions, including any role that the employer should have in ensuring that issuers have the information necessary to determine which issuer is responsible for reinsurance contributions, as well as alternative approaches that should be considered for determining responsibility for reinsurance contributions in such circumstances.

Finally, we addressed in the proposed rule certain inquiries as to how reinsurance contribution obligations would be allocated in the case of a group health plan under which some benefit options for employees are insured by an issuer, and some options offer benefits without the involvement of an issuer in insuring the benefits (because either the group health plan or some non-issuer entity assumes the risk for that coverage option). We proposed that in such a case, if a coverage option is insured by an issuer, the issuer would be responsible for the reinsurance contribution associated with that coverage option. If an employee coverage option under such a group health plan is not insured (because either the group health plan or other non-issuer assumes the risk), we proposed that the group health plan would be responsible for the reinsurance contribution associated with that coverage option. After considering the comments received, we are modifying the proposed provisions by amending the “percentage of benefits” provision to state that the issuer of the plan that provides the greatest portion of the inpatient hospitalization benefits would be responsible for reinsurance contributions. We also are making two minor revisions to the language in proposed paragraph (a)(3) to clarify its scope.

Comment: Several commenters suggested that the “higher percentage of benefits” approach in proposed § 153.400(a)(3) is administratively burdensome and presents significant operational problems. A number of commenters suggested an alternative approach that would require the issuer that covers hospitalizations to be responsible for reinsurance contributions.

One commenter agreed with HHS’s statement in the preamble to the proposed rule that issuers may not know about other coverage purchased

by a plan sponsor, so directing issuers to seek representations from plan sponsors concerning the relative percentage of coverage offered by the issuer was reasonable. The commenter suggested that issuers be able to rely on employer representations regarding other coverage, and that issuers be held harmless from compliance actions if they do not receive such information from employers, or if the information is inaccurate. However, another commenter stated that plans or plan sponsors should not be required to provide information to issuers and that a rule that “looks to the types of coverage provided” is appropriate. One commenter requested clarification on which entity would be liable for reinsurance contributions where a group health plan has two insured major medical components offered by different issuers. The commenter stated that some States prohibit HMOs from providing out-of-network coverage for non-emergency services. HMOs in those States package their in-network coverage with out-of-network coverage issued by a non-HMO health insurance issuer, so that enrollees in the HMO have simultaneous coverage under both products. The commenter suggested that the rule should provide the issuer of the in-network coverage (the HMO, which would be expected to account for the majority of the total health coverage under the group health plan) is responsible for reinsurance contributions.

Response: We are revising proposed § 153.400(a)(3) to state that the issuer of the plan that provides the greatest portion of inpatient hospitalization coverage will be responsible for reinsurance contributions, and note that the issuer should be the issuer that provides the majority of the dollar value of the benefits in most situations. We believe this option will mitigate the operational difficulties discussed by the commenters, and will significantly reduce the need for plan sponsors to provide information to issuers. Because we recognize that there may be circumstances in which an issuer is unsure whether its coverage provides the greatest portion of inpatient hospitalization benefits, we intend to hold an issuer harmless from non-compliance actions for failure to pay reinsurance contributions if the issuer relies in good faith upon a written representation by the plan sponsor that the issuer’s coverage does not provide the greatest portion of inpatient hospitalization benefits.

Comment: One commenter asked HHS to clarify the type of group health plan coverage intended to be addressed by

the proposed addition of paragraph (a)(3) to § 153.400.

Response: Section 153.400(a)(3) applies to fully insured group health plans that offer health insurance coverage through more than one policy. For example, a fully insured group health plan with two insurance policies, one of which covers inpatient hospitalization and another that covers doctors’ office visits, prescriptions, vision and dental benefits, or other similar arrangements, would be covered by this paragraph.

Comment: One commenter requested a clarification on the proposed approach to allocating responsibility for reinsurance contributions, in the case of a group health plan where some options offered under a plan are insured and some options offer benefits without the involvement of an issuer (because either the group health plan or a non-issuer entity assumes the risk for that coverage option). The commenter requested that HHS clarify that the reinsurance contribution will not be imposed with respect to the same covered life more than once.

Response: Under the proposed approach, in such a group health plan, the issuer would be liable for reinsurance contributions with respect to an insured coverage option, and the group health plan would be liable for reinsurance contributions with respect to a coverage option that is not insured. Consequently, reinsurance contributions would not be required more than once for the same covered life.

In general, it is our intent not to require payment of reinsurance contributions more than once for the same covered life. We recognize that certain complex group health plan arrangements can lead to situations in which lives are covered multiple arrangements and where it is unclear whether more than one health plan or issuer must make reinsurance contributions on the same covered life.

To provide clarity on the matter, we intend to clarify in future rulemaking the principle that reinsurance contributions are required only once with respect to the same covered life. We also intend to propose that no reinsurance contributions are required under a group health plan where the group health plan coverage applies to lives that are also covered by individual market health insurance coverage for which reinsurance contributions are required, or where the coverage is supplemental or secondary to group health coverage for which reinsurance contributions must be made for the same covered lives.

Summary of Regulatory Changes

We are finalizing the reinsurance contribution provision discussed above as proposed, with the following modifications. We are modifying the “percentage of benefits” provision to state that the issuer of the plan that provides the greatest portion of the inpatient hospitalization benefits will be responsible for reinsurance contributions. We also are making two minor revisions to language in proposed paragraph (a)(3) to clarify its scope.

b. Maintenance of Records (§ 153.405(h) and § 153.410(c))

To meet our obligation to safeguard Federal funds, we proposed to amend § 153.405 by adding paragraph (h), which would require a contributing entity to maintain documents and records, whether paper, electronic, or in other media, that are sufficient to substantiate the enrollment count submitted under § 153.405 for at least 10 years, and would direct the contributing entity to make that evidence available upon request from HHS, the OIG, the Comptroller General, or their designees, for the purpose of verifying reinsurance contribution amounts. We also proposed to amend § 153.410 by adding paragraph (c), which would direct an issuer of a reinsurance-eligible plan in a State where HHS operates reinsurance to maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the requests for reinsurance payments made pursuant to § 153.410 for at least 10 years, and would require the issuer to make that evidence available upon request from HHS, the OIG, the Comptroller General, or their designees, (or, in a State where the State is operating reinsurance, the State or its designee) for the purpose of verifying reinsurance payment requests. We note that these standards could be satisfied if the contributing entity or issuer of a reinsurance-eligible plan archived the documents and records and ensured that they were accessible in the event of an investigation, audit, or other review. We note that the 10-year obligation to retain records begins when the record is created.

We addressed the comments received on the proposed maintenance of records provisions in the preamble discussion related to § 153.240(c) above.

Summary of Regulatory Changes

We are finalizing these provisions as proposed, with one clarification in each provision to conform with the other record retention standards in this rule. We are clarifying that in each provision

it is the “documents and records” that must be made available upon request.

6. Subpart F—Health Insurance Issuer Standards Related to the Risk Corridors Program

a. Definitions (§ 153.500 and § 153.510)

Section 1342(a) of the Affordable Care Act provides that “a qualified health plan offered in the individual or small group market” is to participate in the risk corridors program. In the Exchange Establishment Rule, we stated that a stand-alone dental plan is “a type of qualified health plan.” However, we did not intend for all requirements applicable to a QHP to apply to stand-alone dental plans. For example, under 45 CFR 155.1065(a)(3), certain QHP standards are not applicable to a stand-alone dental plan if they cannot be met, given the limited benefit package offered by the plan. We believe that it would not be appropriate to subject stand-alone dental plans to the risk corridors program because such plans are considered excepted benefits plans under section 2791(c) of the PHS Act, and are therefore not subject to the rating rules—that is, the Federal prohibition on underwriting premiums, the requirement to base premium rating using the single risk pool, and the fair health insurance premiums limitations. Thus, although States have the option to prohibit underwriting for excepted benefits plans, and issuers of stand-alone dental plans may voluntarily choose not to underwrite these plans, we believe that, in general, an issuer of a stand-alone dental plan will not be subject to the same rate-setting uncertainty in 2014 as the issuer of a major medical plan, and will not need the risk-sharing protections of risk corridors.¹⁶ In the proposed rule, we noted that stand-alone dental plans are similarly excluded from participation in the two other premium stabilization programs—reinsurance and risk adjustment. We also noted that, consistent with the exclusion of excepted benefits plans from the medical loss ratio (MLR) requirements, stand-alone dental claims would not be pooled along with an issuer’s other claims for the purposes of determining “allowable costs” in the risk corridors

¹⁶ In the preamble to the Exchange Establishment Rule, we note that each Exchange has the authority to require, as a condition of certification, comprehensive medical QHPs to offer and price the pediatric dental EHB (if covered) separately, if doing so would be in the best interest of consumers. For the 2014 benefit year, an FFE will not require comprehensive medical QHP issuers that provide pediatric dental coverage to do so. We have provided this guidance in Chapter 4 of the 2014 Letter to Issuers on Federal and Partnership Marketplaces (April 5, 2013).

calculation, as defined at 45 CFR 153.500. We received several comments, all of which were supportive of this approach.

Summary of Regulatory Changes

We are finalizing this policy as proposed, and are adding a new paragraph (e) to § 153.510, which provides that a QHP issuer is not subject to the provisions under subpart F of part 153 with respect to a stand-alone dental plan.

b. Calculation of Allowable Costs, Attribution and Allocation of Revenue and Expense Items, and Risk Corridors Data Requirements (§ 153.500, § 153.520, and § 153.530)

In the interim final rule (78 FR 15541), we noted that, consistent with the single risk pool provision at 45 CFR 156.80, which directs an issuer to pool claims costs across all of its non-grandfathered health plans in a market within a State, a QHP issuer must pool allowable costs across all its non-grandfathered plans in the relevant market for the purposes of risk corridors calculation. We therefore amended the regulatory definition of “allowable costs” for purposes of the risk corridors program so that allowable costs for a QHP are equal to the pro rata portion of the QHP issuer’s incurred claims. We also modified the provision related to attribution and allocation of revenue and expense items in 45 CFR 153.520 to conform to the changes for the risk corridors calculation described above.

We are finalizing the policy set forth in the interim final rule with respect to the definition of “allowable costs,” and are making a number of modifications to maintain consistency with this policy in response to comment, as described below.

Comment: Several commenters recommended that we exclude the experience of non-QHPs from the risk corridors calculation, and include only the experience of an issuer’s QHPs in our definition of allowable costs. These commenters were concerned that tying allowable costs to the experience of all of a QHP issuer’s non-grandfathered health plans would have the effect of diluting the pricing protections afforded to QHPs through the risk corridors program. One commenter believed that it would be inconsistent to disconnect the premiums used for the risk corridors target amount from the claims used to develop the allowable costs, and suggested an alternate approach that would direct issuers to aggregate incurred claims for all QHPs and then allocate these incurred claims to each QHP pro rata based on the earned

premium of each QHP as a percentage of total earned premium for all QHPs. The commenter believed that, while this proposal would not affect the risk corridors calculation, it would require issuers to separate QHP and non-QHP claims and risk adjustment payments and charges.

Response: We are finalizing the definition of allowable costs as set forth in the interim final rule without change. As discussed in the preamble to the interim final rule, this approach is consistent with how issuers will determine premiums pursuant to the single risk pool requirement at 45 CFR 156.80. As stated in the interim final rule, allowable costs will be calculated based on an issuer's experience for all non-grandfathered plans in a State market, such that the actual risk corridors payment or charge will be calculated based on a QHP's pro rata share (based on premiums) of the QHP issuer's market-wide allowable costs and premiums. This approach ensures that the incurred claims used to develop the allowable costs in the numerator of the risk corridors calculation are consistent with the projected claims used to develop the premiums used to calculate the target amount in the denominator of the risk corridors calculation. We also note that this approach aligns with existing processes for the MLR program, and helps to maintain overall consistency between the MLR and risk corridors programs.

We agree with the comment that it is inconsistent to disconnect the projected claims used to develop premiums used to calculate the risk corridor target amount from the incurred claims used to develop the allowable costs, and are therefore modifying our risk corridors expense allocation rules at 45 CFR 153.520 to ensure that the numerator and the denominator of the risk corridors calculation are calculated in a fully consistent manner. We are revising the risk corridors allocation rules in § 153.520 to clarify that administrative expenses in the target amount, like allowable costs, should be calculated based on expenses across all non-grandfathered health plans in the market, and allocated pro rata to a QHP based on the QHP's premiums. Because certain administrative expenses, such as Exchange user fees are, like incurred claims costs, required to be spread across the relevant risk pool, their treatment should conform with the market-wide risk corridors calculation for allowable costs and premiums. Thus, we are clarifying that administrative expenses should be similarly allocated. We note that this change is consistent with our intention to align the risk

corridors calculation with the single risk pool provision, will further align the calculations for the MLR and risk corridors programs, and will reduce the burden on issuers of allocating expenses on a plan-by-plan basis.

Finally, we are also making conforming corrections to the risk corridors data requirements in § 153.530(b) and (c) to specify that issuers must submit risk corridors data in a manner that is consistent with the calculation of allowable costs and allowable administrative costs, as defined at § 153.500. We provide that a QHP issuer must submit to HHS data on allowable costs and allowable administrative costs incurred for all of its non-grandfathered plans in a market within a State. Without these corrections, issuers would be required to make plan-specific allocations and submit plan-specific amounts that are not necessary for the risk corridors calculation, while not providing the QHP aggregate premium data required for the risk corridors calculation as amended. We believe that these corrections will alleviate potential confusion among issuers with regard to submission of pooled risk corridors data.

Comment: One commenter noted that the risk corridors calculation compares allowable costs for QHPs and non-QHPs in the numerator of the calculation to target amounts for only QHPs in the denominator. The commenter recommended that the numerator of the calculation should only pool incurred claims across an issuer's QHPs to ensure a consistent comparison. One commenter noted that the single risk pool provision at 45 CFR 156.80 permits specific plan level premium adjustments, such that QHP premiums would reflect certain factors that relate particularly to QHPs, in addition to market-wide factors. Consequently, the commenter believed that an approach that limited the risk corridors calculation to the experience of only an issuer's QHPs would still be consistent with the single risk pool provision. However, another commenter supported the modification to the calculation of allowable costs that was set forth in the interim final rule, and believed that our policy was consistent with the single risk pool provision.

Response: Because a QHP's target amount is based on the QHP's premiums, which are principally set based on the index rate for QHPs and non-QHPs in the relevant market, we believe it is more consistent to set allowable costs based on the pooled claims costs of both QHPs and non-QHPs. We believe the allocation of the

allowable costs by plan premiums addresses the plan-specific premium variation.

Comment: All commenters supported the modification to the risk corridors formula to calculate allowable costs based on incurred claims at an aggregate level, rather than using incurred claims specific to each QHP.

Response: We are finalizing our definition of allowable costs to calculate allowable costs based on aggregate incurred claims as set forth in the interim final rule.

Summary of Regulatory Changes

We are finalizing the definition of "allowable costs" in § 153.500 without change. We are modifying § 153.520(a) and (b) to provide that expenses in the target amount of the risk corridors calculation should be based on market-wide expenses, and must be allocated across a QHP issuer's plans in proportion to the plans' premiums. Finally, we are making conforming modifications to the risk corridors data requirements in § 153.530(b) and (c) to require a QHP issuer to submit data on allowable costs and allowable administrative costs for its non-grandfathered health plans in a market within a State.

7. Subpart G—Health Insurance Issuer Standards Related to the Risk Adjustment Program

We proposed to amend § 153.620(b) to add a standard that would direct an issuer that offers risk adjustment covered plans to maintain documents and records, whether paper, electronic, or in other media, sufficient to enable the evaluation of the issuer's compliance with applicable risk adjustment standards, and to make that evidence available upon request from HHS, the OIG, the Comptroller General, or their designees (or in a State where the State is operating risk adjustment, the State or its designee), to any such entity. This standard, which is consistent with other records maintenance standards in this rule, would direct an issuer of a risk adjustment covered plan to retain additional records—not only those pertaining to data validation—to substantiate its compliance with risk adjustment standards, whether risk adjustment is operated by HHS or a State.

We addressed the comments received on the proposed maintenance of records provisions in the preamble discussion of § 153.240(c) above.

Comment: Several commenters asked HHS to clarify the record retention timeframe for this proposed provision.

Response: We are amending this proposed provision to specify the record retention timeframe for this proposed provision. We clarify that an issuer that offers risk adjustment covered plans must maintain documents and records, whether paper, electronic, or in other media, sufficient to enable the evaluation of the issuer's compliance with applicable risk adjustment standards for each benefit year, *for at least 10 years*, and make those documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees (or in a State where the State is operating risk adjustment, the State or its designee), to any such entity. We note that the 10-year obligation to retain records begins when the record is created.

Comment: One commenter encouraged HHS to prohibit QHP issuers from demanding documentation or paperwork from physician practices or independently auditing physician practices in order to comply with HHS's proposed oversight requirements.

Response: This regulation does not seek to regulate the relationships between issuers of risk adjustment covered plans and health care providers. Rather, we expect that risk adjustment covered plans will make appropriate arrangements with providers to ensure compliance with this regulation.

Comment: One commenter asked HHS to amend this standard to provide that these documents and records be made available to the issuer's data validation auditor as well as HHS, the OIG, the Comptroller General, or their designees.

Response: We are not extending this provision to require an issuer of a risk adjustment covered plan to make available its documents and records to its data validation auditor. A data validation auditor's authority to review an issuer's relevant documents will be addressed under the risk adjustment data validation regulations in 45 CFR 153.630.

Summary of Regulatory Changes

We are making two corrections to this provision, to conform with our other record retention provisions throughout this rule. We are clarifying that it is the "documents and records" that must be made available upon request. We are also clarifying that documents and records must be maintained for each benefit year, for at least 10 years.

8. Subpart H—Distributed Data Collection for HHS-Operated Programs

a. Failure To Comply With HHS-Operated Risk Adjustment and Reinsurance Data Requirements (§ 153.740(a))

In § 153.740(a), we proposed that HHS may pursue an enforcement action for CMPs against an issuer in a State where HHS operates the reinsurance or risk adjustment program, if the issuer fails to: (a) Establish a secure, dedicated distributed data environment pursuant to 45 CFR 153.700(a); (b) provide HHS with access to enrollee-level plan enrollment information, enrollee claims data, or enrollee encounter data through its dedicated distributed data environment pursuant to 45 CFR 153.710(a); (c) otherwise comply with the requirements of 45 CFR 153.700 through 153.730; (d) adhere to the reinsurance data submission requirements set forth in 45 CFR 153.420; or (e) adhere to the risk adjustment data submission and data storage requirements set forth in 45 CFR 153.610 through 153.630. As discussed above, under the data collection approach that we are implementing when we operate risk adjustment or reinsurance on behalf of a State, an issuer must use masked enrollee identification numbers when making data accessible through the dedicated distributed data environment. In addition, we will not store any personally identifiable enrollee information or individual claim-level information from the data that issuers make accessible to HHS through the dedicated distributed data environment except when conducting data validation or audits.

Risk Adjustment: Risk adjustment covered plans must provide access to the risk adjustment enrollee-level plan enrollment information, enrollee claims data, or enrollee encounter data from the issuer by April 30 of the year following the applicable benefit year in order for HHS to calculate payment transfers based on claims experience and premiums as set forth in 45 CFR 153.730. In order to enforce risk adjustment standards when operating risk adjustment on behalf of a State pursuant to our authority under section 1321(c)(2) of the Affordable Care Act, we proposed establishing HHS authority to impose CMPs, and applying the related enforcement standards set forth in § 156.805 to non-compliant issuers. If a risk adjustment covered plan does not comply with the requirements set forth in 45 CFR 153.610 through 153.630 and 45 CFR 153.700 through 153.730, we proposed to apply a sanction so that the

level of the enforcement action would be proportional to the level of the violation. While we would reserve the right to impose penalties up to the maximum amounts set forth in § 156.805(c), as a general principle, we stated our intent to work collaboratively with issuers to address problems in establishing dedicated distributed data environments in 2014. We noted that HHS would reserve the right to impose, or not impose, CMPs as appropriate. We proposed that in our application of CMPs, we would take into account the totality of the issuer's circumstances, including such factors as an issuer's previous record of non-compliance (if any), the frequency and level of the violation, and any aggravating or mitigating circumstances. Our intent is to encourage issuers to address non-compliance and not to severely affect their financial condition, especially where the issuer demonstrates good faith in monitoring compliance with applicable standards, identifies any suspected occurrences of non-compliance, and attempts to remedy any non-compliance. For instance, if an issuer of a risk adjustment covered plan did not establish a dedicated distributed data environment or provide access to the necessary risk adjustment data to permit HHS to timely calculate the applicable risk adjustment transfer amounts, HHS would assess a default risk adjustment charge as described below. HHS might also elect to impose CMPs in conjunction with the imposition of the default risk adjustment charge if an issuer failed to comply with applicable data security or privacy standards placing the interests of third-parties at risk.

Reinsurance: We proposed that an issuer of a reinsurance-eligible plan may be subject to CMPs for failure to comply with 45 CFR 153.420, or 45 CFR 153.700 through 153.730. Under this proposal, HHS would take into account the totality of the issuer's circumstances, including such factors as an issuer's previous record of non-compliance (if any), the frequency and level of the violation, and any aggravating or mitigating circumstances when determining how to apply CMPs. In the proposed rule, we indicated that we might not impose CMPs in certain cases. For example, HHS might not impose CMPs on an issuer of a reinsurance-eligible plan if it fails to set up a dedicated distributed data environment or meet certain data requirements stated above if, as a consequence, HHS simply does not have the necessary claims data from the dedicated distributed data environment to calculate or distribute

reinsurance payments for the reinsurance-eligible plan, and as a result, the reinsurance-eligible plan would forgo significant reinsurance payments that it otherwise might have received. Regardless, HHS reserves the right to impose CMPs irrespective of whether an issuer becomes ineligible for reinsurance payments as a result of failing to comply with 45 CFR 153.420, or 45 CFR 153.700 through 153.730. After considering the comments received, we are finalizing § 153.740(a) with one modification. We are including a compliance standard, parallel to that set forth in 45 CFR 156.800(c), providing that CMPs will not be imposed under this provision during the 2014 calendar year, if the issuer has made good faith efforts to comply with the applicable requirements.

Comment: Several commenters supported HHS's proposed flexibility and cooperation with issuers when imposing CMPs on issuers that fail to establish a dedicated distributed data environment or provide HHS access to all necessary data. Commenters supported taking into account an issuer's good faith attempts to comply with the data requirements. One commenter suggested that HHS provide standards that would allow issuers to demonstrate that they have complied with the data requirements. Another commenter asked HHS to adopt a "safe harbor" that would defer the imposition of any CMPs for two years, and to require only good faith compliance. One commenter specifically suggested that issuers be subject to CMPs if they are out of compliance with risk adjustment and reinsurance data requirements for two or more consecutive benefit years, or if they fail to correct significant deficiencies discovered during the risk adjustment initial and secondary validation audit processes that result in substantially inaccurate data or produce upcoding trends significantly greater than those found among other issuers in the State.

Response: As we described in the proposed rule, HHS will take into account the totality of an issuer's circumstances, including such factors as the issuer's previous record of non-compliance (if any), the frequency and level of the violation, and any aggravating or mitigating circumstances, including the issuer's good faith in monitoring compliance with applicable standards and attempts to remedy any non-compliance. In addition, consistent with our policy and standards with respect to sanctions for non-compliance with FFE standards set forth in 45 CFR 156.800, 45 CFR 156.805, and 45 CFR 156.810, we are clarifying that if HHS is

able to determine that an issuer of a risk adjustment covered plan or reinsurance-eligible plan, as applicable, is making good faith efforts to comply with the standards set forth in § 153.740(a), we will not seek to impose CMPs for non-compliance with those standards during 2014. Based on the comments received in connection with the proposed rule, in 45 CFR 156.800(c), we provided that for 2014, sanctions under that subpart will not be imposed if the QHP issuer has made good faith efforts to comply with applicable requirements. We are adopting a similar CMP enforcement strategy here. However, we note that nothing in this provision prohibits HHS from imposing CMPs in 2015 for non-compliance that occurred in 2014. At the appropriate time, we will consider extending this good faith compliance policy through 2015. We also note that this good faith compliance policy does not apply to the imposition of the default risk adjustment charge described in § 153.740(b), which is intended as an administrative measure to ensure that HHS may properly calculate risk adjustment payments and charges for the entire market. Finally, we note that HHS's determination of good faith may require issuers of risk adjustment covered plans and reinsurance-eligible plans to allow HHS to conduct reviews of the issuer's risk adjustment and reinsurance materials and to review the issuer's good faith efforts to comply with corrective action plans.

Comment: One commenter asked whether the enforcement authority proposed in § 153.740 will apply to issuers in States where HHS operates reinsurance but the State operates the risk adjustment program.

Response: The enforcement actions set forth in § 153.740 apply to issuers that fail to comply with HHS-operated risk adjustment and reinsurance data requirements. As such, in States where HHS operates reinsurance but the State operates the risk adjustment program, the enforcement authority proposed in § 153.740 would apply with respect to non-compliance with reinsurance-related standards to issuers of reinsurance-eligible plans, but not to non-compliance with respect to risk adjustment-related standards to issuers of risk adjustment covered plans.

Comment: One commenter asked that HHS permit issuers to appeal any HHS enforcement actions.

Response: As noted in the proposed rule, HHS may impose CMPs in accordance with the procedures set forth in § 156.805 of this subchapter. Sections 156.805(d) and (e) provide a process for issuers that are assessed a CMP to request a hearing. We intend to

propose an administrative process in the HHS Notice of Benefit and Payment Parameters for 2015 through which an issuer may appeal the assessment of a default risk adjustment charge.

Summary of Regulatory Changes

To clarify our 2014 policy of nonenforcement of CMPs for good faith, we are adding a new sentence to § 153.740(a).

b. Default Risk Adjustment Charge (§ 153.740(b))

As described in the Premium Stabilization Rule (77 FR 17220) and the 2014 Payment Notice (78 FR 15410), HHS will employ a distributed data collection approach when it operates a risk adjustment program on behalf of a State. Under this approach, issuers in States where HHS operates a risk adjustment program will be required to establish dedicated, secure data environments, and provide HHS with access to "masked"¹⁷ enrollee-level plan enrollment information, enrollee claims data, and enrollee encounter data pursuant to 45 CFR 153.710 and 45 CFR 153.720. Pursuant to 45 CFR 153.730, issuers must provide access to required risk adjustment data by April 30 of the year following the applicable benefit year in order for HHS to calculate risk adjustment payment transfer amounts. As discussed above, under the data collection approach we are implementing when we operate risk adjustment or reinsurance on behalf of a State, we will not store any personally identifiable enrollee information or individual claim-level information from the data that issuers make accessible to HHS through the dedicated distributed data environment except for purposes of data validation and audit.

As discussed in the proposed rule, if an issuer does not set up a dedicated distributed data environment or submits inadequate risk adjustment data, HHS would not have the required risk adjustment data from the issuer to calculate risk scores or payment transfers. This data is necessary to properly calculate risk adjustment payments and charges for the entire applicable market for the State. If HHS cannot perform this calculation for a particular issuer, risk adjustment payment transfers would be affected for all other issuers in the State market because payment transfers are determined within a market within a State such that they will net to zero. In the proposed rule, we invoked our

¹⁷ As described at 45 CFR 153.720(b), masked data means data associated with a unique identifier, where the unique identifier does not include the enrollee's personally identifiable information.

authority pursuant to section 1343(b) of the Affordable Care Act to develop and apply criteria and methods for carrying out risk adjustment activities to apply a default risk adjustment charge to issuers in the individual or small group market that fail to provide the risk adjustment data necessary for HHS to calculate payments and charges for the market in the State.

In § 153.740(b), we proposed that if an issuer of a risk adjustment covered plan fails to establish a dedicated distributed data environment or fails to provide HHS with access to risk adjustment data in such environment by April 30 of the year following the applicable benefit year in accordance with §§ 153.610(a), 153.700, 153.710, or 153.730, such that HHS cannot apply its Federally certified risk adjustment methodology to calculate the plan's risk adjustment payment transfer amount in a timely fashion, HHS would assess a default risk adjustment charge.

We proposed two different methods for determining the per member per month amount used to calculate the default risk adjustment charge. One option would be to use the highest per member per month charge among risk adjustment covered plans in a risk pool in the market in the plan's geographic rating area. A second option would be to use a per member per month amount that is two standard deviations above the mean charge in the market in the plan's geographic rating area.

We noted in the proposed rule that in order to calculate a plan's risk adjustment default charge, we must multiply the per member per month amount by an enrollment count. We proposed to base the default charge on the average enrollment in the State market. If enrollment data is provided, we proposed that the default charge would be based on average annual enrollment for the plan in a risk pool in the State market. We sought comment on these methods, other appropriate methods for calculating a default risk adjustment charge, and other sources of data HHS could use to determine enrollment data for the issuers in question. We also sought comment on whether to allocate an issuer's default charge to other issuers in the market as part of payments and charges in the concurrent benefit year, during a subsequent benefit year, or sometime between annual payments and charges processes.

We received a number of comments strongly supporting our proposal to impose a default risk adjustment charge if an issuer of a risk adjustment covered plan fails to establish a dedicated distributed data environment or fails to

provide HHS with access to the required data. We are finalizing that regulation text as proposed.

Comment: Several commenters suggested that we tie the default charge to the issuer's actual enrollment based on an appropriate public filing by the issuer, such as MLR or NAIC filings, or information supplied by a State Department of Insurance (DOI), rather than average enrollment in the State.

Response: We agree with the comments, and are finalizing an approach based on the issuer's actual enrollment. Because the total risk adjustment default charge is a function of both a per member per month amount as well as a total enrollment amount, we recognize that actual enrollment would better align the risk adjustment default charge with the overall goal of market stabilization. Thus, if an issuer of a risk adjustment covered plan does not provide access to required risk adjustment data by April 30 of the year following the applicable benefit year, then we will seek from the issuer an attestation of total billable member months, which we would use to calculate the total risk adjustment default charge. That attestation would be subject to later HHS validation processes, which we will describe in future rulemaking and guidance, along with compliance with other risk adjustment-related requirements. If an issuer does not submit enrollment data, HHS will seek enrollment data from the issuer's MLR and risk corridors filings for the applicable benefit year, or, if unavailable, other reliable data sources, such as the State DOI.

Comment: We received several comments suggesting that HHS allocate an issuer's default charge to other issuers in the market as part of the payments and charges calculation in the concurrent benefit year.

Response: We agree that the default risk adjustment charge should be part of the concurrent benefit year payment and charges calculation. However, our ability to apply that charge to the current year will depend upon when we are able to obtain the enrollment data for the plan in question. As discussed above, HHS will assess the risk adjustment default charge once HHS receives actual enrollment data. Once calculated, we would transfer the risk adjustment default charge on a per member per month basis to all compliant risk adjustment covered plans in the plan's risk pool in the market in the State in the earliest possible payment and charges cycle. We further note that we would not include the non-compliant risk adjustment covered plan in the risk adjustment

transfer formula calculations because of the complexity of doing so. We intend to establish a methodology for allocating the default risk adjustment charge among plans in the risk pool in future rulemaking.

Comment: A number of commenters made suggestions on the specific methodology to be used to determine the per member per month amount for calculating the default risk adjustment charge. One commenter supported the second option for calculating the per member per month amount—assessing a per member per month amount two standard deviations above the mean per member per month charge. One commenter supported the use of the second option for calculating the per member per month amount for the first occurrence of non-compliance, but stated that setting a higher amount, such as the highest per member per month charge among risk adjustment covered plans in the market, would be appropriate for repeated violations. Other commenters asked that HHS adopt a third methodology for calculating the per member per month amount—specifically, a fixed percentage of State-wide average premium. They stated that this methodology could be more appropriate if a market has a limited number of issuers that submit risk adjustment data.

Response: In light of the comments received, we will not finalize a methodology to calculate the per member per month amount used in the default risk adjustment charge. We intend to establish that methodology in future rulemaking.

Summary of Regulatory Changes

We are finalizing our regulation text providing the authority to impose a default risk adjustment charge as proposed. We are finalizing aspects of the methodology for calculating the default risk adjustment charge—our use of the plan's actual enrollment and our application of the default risk charge to adjust payments to other plans in the market in the State on a per member per month basis in the earliest available payment and charges cycle. We are not finalizing our approach to determining the per member per month amount used to calculate the default risk charge at this time, and will propose that methodology in future rulemaking.

D. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

1. Subpart D—Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

a. Administration of Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions (§ 155.340)

We proposed to amend § 155.340 by adding paragraph (h), which sets forth additional requirements applicable when an Exchange is facilitating the collection and payment of premiums to QHP issuers and stand-alone dental plans. Specifically, we proposed that if the Exchange did not reduce an enrollee's premium by the amount of the advance payment of the premium tax credit in accordance with 45 CFR 155.340(g), the Exchange would be required to refund to the enrollee any excess premium paid by or for the enrollee. The Exchange would also be required to notify the enrollee of the improper application of the advance payment of the premium tax credit no later than 30 calendar days after the Exchange discovers the error. We noted that an Exchange may provide the refund to the enrollee by reducing the enrollee's portion of the premium in the following month, as long as the reduction is provided no later than 30 calendar days after the Exchange discovers the improper application of the advance payment of the premium tax credit. We proposed that if the Exchange elects to provide the refund by reducing the enrollee's portion of the premium for following month, and the refund exceeds the enrollee's portion of the premium for the following month, then the Exchange would need to refund to the enrollee the excess, no later than 30 calendar days after the Exchange discovers the improper application of the advance payment of the premium tax credit. These provisions are similar to the policy we proposed in § 156.460, when a QHP issuer is collecting premiums directly from enrollees. We also noted that we were considering requiring the Exchange to provide to HHS for each quarter, a report detailing the occurrence of any improper application of the advance payments of the premium tax credit beginning in the 2015 benefit year. We sought comment on whether HHS should establish a minimum error rate or threshold before an Exchange is required to inform HHS of such improper applications of the advance payment of the premium tax credit in a quarterly report, as well as

what an appropriate error rate or threshold should be. For example, we noted that we were considering requiring issuers to report the number of enrollees for whom the Exchange improperly applied the advance payment of the premium tax credit compared to the total number of enrollees in the Exchange receiving Federal premium subsidies. We also sought comment on whether such reports should be provided to HHS less frequently than quarterly.

Comment: Several commenters supported the proposed policy and some commenters suggested that the enrollee should have the option of receiving the refund directly, especially upon termination of coverage. One commenter expressed concern that Exchanges would not have money to refund enrollees, since premiums and subsidies are paid to issuers, and asked HHS to clarify that plans are not responsible for sending the Exchange or consumers money to correct mistakes made by the Exchange.

Response: In § 156.460 of the proposed rule we sought comment on the timeframe for QHP issuers to refund any excess premiums to enrollees. We also noted that the policy proposed in § 155.340(h) is similar to the policy proposed in § 156.460(c), when a QHP issuer is collecting premiums directly from enrollees and fails to apply the advance payment of the premium tax credit to the enrollee's portion of the premiums, and that these parallel requirements are designed to ensure that all enrollees, regardless of whether a QHP issuer or the Exchange is collecting premiums, are afforded the same level of protection. As discussed further in section II.E.4.d, we received a number of comments to the policy proposed in § 156.460(c) requesting that the timeframe for QHP issuers to refund any excess premiums to enrollees be extended. In response to comments to the policies proposed in this section and § 156.460(c), and in order to align with parallel modifications in this final rule in § 156.460(c), we are modifying the proposed policy. We are finalizing a policy such that if an Exchange discovers that it did not reduce an enrollee's premium by the amount of the advance payment of the premium tax credit, then, if requested by or for the enrollee, the Exchange must refund any excess premium paid by or for the enrollee within 45 calendar days of the request. However, if the enrollee does not request a refund, the Exchange may refund the excess premium paid by applying the excess to the enrollee's portion of the premium each month for the remainder of the period of

enrollment or benefit year until the excess premium is fully refunded. Any excess amounts not refunded at the end of the period of enrollment or benefit year would have to be refunded within 45 days of the end of such period.

As discussed above, this provision applies when an Exchange facilitates collection and payment of the premiums to QHP issuers and stand-alone dental plans on behalf of an enrollee and collects a greater premium from the enrollee than required by the issuer, taking into account the advance payment of the premium tax credit. As an intermediary in this process, if the Exchange collects excess premiums from the enrollee on behalf of the issuer, it should be responsible for recouping the overpayments from the issuer and returning the funds to the enrollee. This standard would not prevent an Exchange for recouping excess funds, in the event the Exchange reduced the enrollee's portion of the premium by more than the advance payment of the premium tax credit. We also note that State Exchanges may not use funding for States establishing an Exchange provided under Section 1311 of the Affordable Care Act for such refunds.

Comment: One commenter asked HHS to limit Exchange errors that must be refunded to the current tax year, since income tax reconciliation should resolve any errors from the previous tax year. Another commenter asked that the enrollee be able to reduce the advance payment of the premium tax credit portion of premium for the remainder of the year, if the refund would result in the enrollee owing \$600 more than would otherwise be available to the enrollee in premium tax credits.

Response: This provision is intended to remedy instances when an Exchange overbills an enrollee for his or her portion of the monthly premium based on the eligibility determination that was made by the Exchange. This standard does not address the reconciliation of the tax credit, eligibility redeterminations, or Exchange errors regarding eligibility and enrollment.

Comment: Several commenters supported a requirement for quarterly reporting. One commenter suggested that such reports should be publicly available and required for all Exchanges, including an FFE, and that Exchanges should have the ability to refute and correct these reports. Another commenter asked HHS to set a minimum threshold for reporting errors, while another commenter opposed a minimum threshold.

Response: We believe that it is important to monitor the appropriate application of these advance payments

of the premium tax credits, regardless of whether an Exchange or the QHP issuer is facilitating the collection and payment of premiums. However, following review of the comments, we are no longer considering a quarterly reporting requirement. In parallel with the standards being finalized under § 156.480 of this final rule applicable to QHP issuers, when a State Exchange is facilitating the collection of premiums, the Exchange will be required to report on an *annual* basis if it did not reduce an enrollee's premium by the amount of the advance payment of the premium tax credit in accordance with 45 CFR 155.340(g)(1)–(2). We have modified § 155.1200 to incorporate this provision because § 155.1200 includes other annual reporting requirements applicable to State Exchanges (see section II.D.1.a below). We note that since issuers in an FFE are responsible for collecting premiums directly from enrollees, such errors will be reported to HHS by the QHP issuers.

Summary of Regulatory Changes

We are finalizing the proposed provisions with the following modifications. We are increasing the time period for notifying the enrollee of the improper application of the advance payment of the premium tax credit and issuing refunds from 30 days to 45 days. We are also providing that the Exchange may issue the refund by applying the total excess premium paid by or for the enrollee to the enrollee's portion of the premium each month for the remainder of the period of enrollment or benefit year until the excess premium is fully refunded, except that the Exchange must refund any remaining excess premium, within 45 days of a request by or for the enrollee for the refund or within 45 days of the end of the period of enrollment or benefit year.

2. Subpart E—Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans

a. Special Enrollment Periods (§ 155.420)

In § 155.420 we proposed to amend § 155.420(d) to provide that a special enrollment period will be available when the Exchange determines that a consumer has been incorrectly or inappropriately enrolled in coverage due to misconduct on the part of a non-Exchange entity. Specifically we proposed to add a new paragraph § 155.420(d)(10) to create this new special enrollment period for qualified individuals. This amendment would extend a special enrollment period to a qualified individual when, in the

determination of the Exchange, misconduct on the part of a non-Exchange entity has caused the qualified individual to be enrolled incorrectly or inappropriately in coverage such that they are not enrolled in QHP coverage as desired, are not enrolled in their selected QHP, or have been determined eligible for but are not receiving advance payments of the premium tax credit or cost-sharing reductions. We proposed to limit this special enrollment opportunity to the individual market Exchange and not extend it to the SHOPS.

We proposed that a non-Exchange entity providing enrollment assistance or conducting enrollment activities would include, but not be limited to, those individuals and entities that are authorized by the Exchange to assist with enrollment in QHP, such as a Navigator, as described in § 155.210; non-Navigator assistance personnel, as authorized by § 155.205(d) and (e); a certified application counselor, as described in § 155.225; an agent or broker assisting consumers in an Exchange under § 155.220; issuer application assisters under § 155.415; or a QHP conducting direct enrollment under § 156.1230.

Comment: We received several comments supporting this proposed amendment to § 155.420(d) to ensure that consumers have an available remedy if misconduct on the part of a non-Exchange entity results in harm.

Response: We are finalizing the rule as proposed to ensure that consumers will have a special enrollment period if harmed by misconduct on the part of non-Exchange entities. We further clarify here that for purposes of § 155.420(d)(10) only, a non-Exchange entity includes an individual or entity fraudulently claiming to be an authorized entity approved by an Exchange, such as a Navigator, non-Navigator assister, or Exchange-approved agent or broker.

Comment: We received a comment recommending that the special enrollment period be available to consumers if a non-Exchange entity provides erroneous information to a consumer, regardless of whether the consumer can demonstrate harm.

Response: We believe that creating a special enrollment period for consumers who have been harmed by non-Exchange entity misconduct will help ensure that consumers have a remedy to address enrollment harms while limiting uncertainty for QHP issuers. We believe that this remedy is necessary for consumers who have been harmed, to allow them to mitigate the harm caused. However, we do not believe this

remedy would be necessary for consumers who have not suffered any harm resulting from misconduct. In addition, as stated in the preamble to the proposed rule, a qualified individual may also seek to demonstrate the existence of exceptional circumstances to the Exchange under § 155.420(d)(9) if the qualified individual is harmed due to error or inaction on the part of a non-Exchange entity. We intend to provide future guidance on the process for demonstrating harm as necessary.

Comment: We received several comments recommending that this special enrollment period be extended to the SHOPS, stating that SHOP consumers may be exposed to the same risk as consumers purchasing coverage in an Exchange.

Response: We believe that it is less likely for an employee enrolled in coverage through a SHOP to be harmed in the ways the new special enrollment period is intended to address than is the case for a qualified individual enrolled in coverage through the individual market Exchange. For example, advance payments of the premium tax credit and cost-sharing reductions are not available to employees enrolled in coverage through a SHOP, such that it would not be possible for them to be determined eligible for but not receive advance payments of the premium tax credit or cost-sharing reductions, one of the harms the special enrollment period was specifically designed to address. However, we are persuaded by the comments that some risk of harm does exist for employees enrolled in coverage through a SHOP, and are therefore extending the special enrollment period to SHOPS. We intend to monitor whether employees avail themselves of the special enrollment period and the circumstances surrounding each such election. We are making minor changes to the proposed rule text to clarify that the special enrollment period would be extended to employees enrolled in coverage through a SHOP and their dependents, and are also making a conforming change to 45 CFR 155.725(j) to clarify that this special enrollment period applies in the SHOPS.

Comment: We received several comments recommending that misconduct on the part of a non-Exchange entity should also result in a special enrollment period for enrollment into public programs the consumer may otherwise be eligible for, such as Medicaid or CHIP.

Response: Medicaid and CHIP have year round enrollment, so individuals eligible for these programs do not need a special enrollment period to enroll in these programs if they have been

incorrectly enrolled in private health insurance coverage.

Comment: We received one comment requesting clarification about what actions might be considered misconduct.

Response: As stated in the preamble of the proposed rule, misconduct includes the failure of a non-Exchange entity to comply with applicable requirements set forth in Exchange regulations, or other applicable Federal or State laws. For example, this might include a Navigator's failure to comply with the requirements set forth in 45 CFR 155.210.

Comment: We received comments stating that the special enrollment period, as proposed, might result in adverse selection or gaming by consumers. One commenter requested that this provision not be codified to eliminate the risk of adverse selection and another commenter requested that the duration of this special enrollment period be limited to 30-days, rather than the 60-days from the date of the triggering event, as proposed.

Response: We believe that any risk that this special enrollment period might result in adverse selection is mitigated by the fact that consumers will need to demonstrate to the Exchange that they have been harmed in order to receive this special enrollment period. We believe that this special enrollment period is important to protect consumers from certain kinds of misconduct on the part of non-Exchange entities. In addition, the 60-day time period for the new special enrollment period in the individual market Exchanges is consistent with special enrollment periods otherwise available to Exchange consumers in the individual market and we believe provides consumers with adequate time to review available plan options and make informed decisions to correct the harm. Consistent with other special enrollment periods available in the SHOPS, this special enrollment period will be for 30 days, not 60 days, in the SHOPS.

Summary of Regulatory Changes

We are finalizing the provision proposed in § 155.420(d)(10) with amendments reflecting our decision to extend the special enrollment period to SHOPS, and with a minor correction to remove "of this subchapter" following "part 156" from the proposed regulation text.

3. Subpart H—Exchange Functions: Small Business Health Options Program (SHOP)

a. Enrollment Periods Under SHOP (§ 155.725)

In section II.D.2 of this final rule, we describe our decision, made in response to comment, to extend to SHOPS the new special enrollment period that will be available when the Exchange determines that a consumer has been incorrectly or inappropriately enrolled in coverage due to misconduct on the part of a non-Exchange entity. Accordingly, we are making a conforming amendment to § 155.725(j)(2)(i) to add a cross-reference to § 155.420(d)(10), the new special enrollment period.

4. Subpart M—Oversight and Program Integrity Standards for State Exchanges

a. General Program Integrity and Oversight Requirements (§ 155.1200)

We proposed that the State Exchange maintain an accounting of all its receipts and expenditures, in accordance with GAAP. We also proposed that the State Exchange develop and implement a process for monitoring all Exchange-related activities for effectiveness, efficiency, integrity, transparency, and accountability. We stated our belief that these activities would help to ensure State Exchange compliance with Federal requirements as set forth in Part 155 and ensure the appropriate administration of Federal funds, including advance payment of the premium tax credit and cost-sharing reductions.

In § 155.1200(b), we proposed that the State Exchange submit several types of reports to HHS. The State Exchange would submit at least annually a report to allow for transparency of State Exchange activities. The report must include a financial statement presented in accordance with GAAP. The report is due to HHS by April 1 of each year. Additionally, the State Exchange must submit reports in a form and manner to be specified by HHS regarding eligibility and enrollment. These reports will focus on eligibility determination errors, non-discrimination safeguards, accessibility of information, and fraud and abuse incidences. The State Exchange must also submit performance monitoring data that includes financial sustainability, operational efficiency, and consumer satisfaction. We sought comments on our approach, including comments on the content, format, and timing of such reports.

In § 155.1200(c) we proposed that the State Exchange engage an independent qualified auditing entity, whether

governmental or private, which meets accepted professional and business standards and follows generally accepted governmental auditing standards (GAGAS) to perform an independent external financial and programmatic audit of the State Exchange. This entity should be selected to avoid any real or potential perception of conflict of interest, including being free from personal, external and organizational impairments to independence or the appearance of such impairments of independence. We stated that an external audit will help ensure the consistency and accuracy of State Exchange financial reporting and program activities. We proposed that this requirement may be satisfied through an audit by an independent State-government entity. We proposed that the State Exchange will submit to HHS, concurrent with the annual report, the results on the audit along with proposals on how it will remedy any material weakness or significant deficiency (the terms "material weakness" and "significant deficiency" are defined in OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations).

In § 155.1200(d) we proposed that independent audits address specific processes and activities of State Exchanges including financial and programmatic activities and those related to the verification and determination of applicants' eligibility for enrollment in the State Exchanges and the subsequent enrollments. We also proposed that the external audit address whether the Exchange is complying with § 155.1200(a)(1) by keeping an accurate accounting of Exchange receipts and expenditures in accordance with generally accepted accounting principles (GAAP). We also proposed that external audits and annual reports required under paragraphs (b) and (c) address State Exchange processes and procedures to comply with the standards for Exchanges under Part 155 related to advance payments of the premium tax credits and cost-sharing reductions. These standards include the requirements under subpart D regarding eligibility determinations, including the requirements regarding the confidentiality, disclosure, maintenance, and use of information as set forth in 45 CFR 155.302(d)(3); subpart E regarding individual market enrollment in QHPs; and subpart K regarding QHP certification. We also proposed that such audits and annual reports assess whether a State Exchange has processes and procedures in place

to prevent improper eligibility determinations and enrollment transactions. We sought comment on the proposed annual audits, and other activities that State Exchanges should specifically be required to audit annually or on an interim basis.

Comment: We received comments on the timing of the annual financial statement. We also received comments requesting additional reporting requirements including reporting for fraud and abuse incidences and suggesting that we specify in regulation text the types of reporting requirements we described in the preamble.

Additionally, commenters suggested that we make reports publicly available.

Response: We do not believe any additional reporting requirements are needed because the financial statement is intended to ensure the transparency of State Exchange activity and the eligibility and enrollment reporting is intended to ensure that processes and procedures are appropriately in place to ensure that Federal requirements are being met.

The performance monitoring data provide insight into the performance and impact of State Exchanges, including the cost of insurance, the scope of coverage, and access issues. This limited set of standardized metrics also ensures basic transparency and allows consistent cross-state comparisons of the impacts of varying approaches to State Exchange implementation. We anticipate providing further guidance on the format and timing of the reports, as well as, whether the public will have access to them.

Comment: One commenter suggested that we make these independent annual audits available to the public and increase the scope of the independent audit.

Response: We accept the commenter's suggestion regarding public availability and we will require the State to make public a summary of the results of the independent annual audit. Publicizing the audit summary will increase the transparency and accountability of State Exchange activities. We are finalizing our proposal that the independent audit address the elements in § 155.1200(d) as described above, as well as all subparts of Part 155. While we are not accepting the commenter's suggestion that independent audits include incomplete applications or application questions most commonly left unanswered, we believe that the criteria in Part 155 and in § 155.1200(d) adequately address areas of compliance including eligibility denials and information to improve the eligibility process. We anticipate issuing

further guidance on the elements of financial and programmatic activities that should be included in the external financial audit.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.1200 with the following modification. As discussed in II.D.1.a of this final rule, if the Exchange is collecting premiums under 45 CFR 155.240, we are adding subparagraph (b)(4) to require the Exchange to annually report if it did not reduce an enrollee's premium by the amount of the advance payment of the premium tax credit in accordance with 45 CFR 155.340(g)(1)–(2). In paragraph (c) we are adding a requirement that the State make public a summary of the results of external financial audit.

b. Maintenance of Records (§ 155.1210)

We proposed that State Exchanges and its contractors, subcontractors, and agents maintain records for 10 years, including documents and records (whether paper, electronic, or other media) and other evidence of accounting procedures and practices of the State Exchanges to prepare for targeted audits. We stated that these records must be sufficient and appropriate to respond to any periodic auditing, inspection, or investigation of the State Exchange's financial records or to enable HHS or its designee to appropriately evaluate the State Exchange's compliance with Federal requirements. We anticipate that targeted audits will be conducted based on information from the external audit, annual report, prospective measurement programs of improper payments, consumer complaints, or other data sources. In addition, we proposed that the State Exchange must make all records of this section available to HHS, the OIG, the Comptroller General, or their designees, upon request.

Comment: Commenters suggested that the proposed maintenance of records requirements for State Exchanges and their contractors, subcontractors, and agents should specifically outline additional records to be kept, which could include data related not only to appeals but to the outcome of the appeals. In addition, commenters suggested that the requirement apply only to those eligible entities contracted with the State Exchanges to carry out one or more responsibilities of the Exchange (see 45 CFR 155.110), and should not apply to QHP issuers.

Response: The maintenance of records provision we are finalizing in § 155.1210 (b) sufficiently addresses the minimum types of records that we

would require State Exchanges to retain. The maintenance of records provision in § 155.1210 only applies to entities that are carrying out one or more responsibilities of the Exchange in the capacity of a contractor, subcontractor, or agent, and does not apply to QHP issuers because these entities do not provide services or carry out one or more responsibilities of the Exchange. Furthermore, the oversight standards with respect to cost-sharing reductions and advance payments of the premium tax credit finalized in 45 CFR 156.480 of this final rule ensure that CMS can sufficiently monitor compliance with federal standards with respect to the federal funds distributed to QHP issuers through these programs. Therefore, requiring QHP issuers to maintain records is not necessary.

Comment: One commenter suggested that HHS articulate how consumers, advocates, Navigators, and other entities will be able to file complaints with HHS in a meaningful way such as triggering a targeted audit.

Response: We expect that the consumer satisfaction section of the performance monitoring data will include reporting on consumer complaints that will be used in determining whether we will conduct a targeted audit.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.1210, and note that the 10 year record retention requirement begins when the record is created.

E. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related To Exchanges

1. Subpart A—General Provisions

a. Definitions (§ 156.20)

We proposed amending 45 CFR 156.20 by adding the definition for “Enrollee satisfaction survey vendor” and “Registered user of the enrollee satisfaction survey data warehouse.”

We are making a technical correction to our regulation text, which inadvertently left out the word “that” from the definition. The definition for “enrollee satisfaction survey vendor” should begin, “an organization that has . . .”

We received no comments in regards to these definitions, and finalize these definitions as proposed, but with the technical corrections as mentioned above.

Summary of Regulatory Changes

We are finalizing this provision as proposed.

b. Single Risk Pool (§ 156.80)

To ensure consistency with rate setting schedules in the Exchanges and thus reduce the risk of adverse selection, we proposed in § 156.80 to add paragraph (d)(3) to clarify when issuers may establish and update premium rates under the single risk pool requirements. Specifically, in paragraph (d)(3)(i), we proposed that issuers in the individual market or in a market in which the individual and small group risk pools were merged by the State would be permitted to make changes to their market-wide adjusted index rate and plan-specific pricing on an annual basis. In paragraph (d)(3)(ii), we proposed that issuers in the small group market would be permitted to make such changes on a quarterly basis once the Federally-Facilitated Small Business Health Options Program's (FF-SHOP) capability to process quarterly rate updates is established. Until that time, we proposed that issuers in the small group market may make changes to rates no more frequently than annually.

Comment: Commenters generally acknowledged the reasons for the proposal to prohibit quarterly index rate and plan-level adjustments for issuers in FF-SHOPs until the issues are resolved, but asserted this policy should not apply in States with SHOPs that have the capability to accept quarterly rate adjustments, nor should they apply to issuers offering coverage in the small group market solely outside of the SHOPs.

Response: HHS, in operating both the FF-SHOPs as well as the market-wide rate review program under section 2794 of the PHS Act, cannot accept quarterly rate changes at this time. Accordingly, we are finalizing our proposal that issuers offering coverage in the small group market through the SHOPs or outside of the SHOPs must refrain from making index rate and plan-level adjustments more frequently than annually, until notified of the system capability to process quarterly rate changes. We expect to establish this capability by the third quarter of 2014.

Comment: One commenter requested clarification as to whether States could require less frequent index rate and plan-level adjustments in the small group market than those specified in the regulation.

Response: Nothing in this final rule prevents a State from requiring less frequent rate changes in the small group market than the quarterly changes permitted under this final rule. At a minimum, however, an issuer in small group or individual market must

establish an index rate each calendar year with an effective date of January 1, and, in the small group market, ensure that any rate changes at other times during the year are effective only on April 1, July 1, or October 1, the only dates for which Federal systems will be in place for processing rate updates. We believe § 156.80(d)(1) already provides for the establishment of an index rate by January 1 of each calendar year, and that the proposed rule contemplates small group market rate changes that correspond to the calendar quarters. Nonetheless, for precision and clarity, we are revising the regulation text to include these clarifications. We note that any new rates set by an issuer would apply for new or renewing coverage on or after the rate effective date, and would apply for the entire the plan year.

Comment: Some commenters sought assurance that the single risk pool requirements would not prevent issuers from filing new products for sale outside of Exchanges nor prevent issuers from entering a market until January 1 of each year.

Response: As described above, under the guaranteed availability standard, all non-grandfathered plans in the individual or merged market must be offered on a calendar year basis starting January 1, 2014. Furthermore, under the single risk pool standard, an index rate must be established and adjusted only once annually in the individual and merged markets. The interaction of these provisions is such that an issuer cannot introduce new products throughout the year without affecting the pricing of all of the issuer's other products in the risk pool, in violation of the single risk pool provision. We note that issuers will have greater flexibility to introduce new products in the small group market, where coverage may be issued on a rolling basis throughout the year and rates generally will be able to be updated on a quarterly basis.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.80 of the proposed rule with the following modifications. We are revising existing paragraph (d)(1) to provide that an index rate must be established and effective for a State market (individual, small group, or merged market) by January 1 of each calendar year. We are also restructuring proposed paragraph (d)(3) to clearly state that an issuer is prohibited from making index rate and plan-level adjustments on any basis other than annually, except in the small group market once quarterly rate changes are permitted. We also now clearly state the

effective dates of quarterly rate updates in the small group market.

2. Subpart B—Standards for Essential Health Benefits, Actuarial Value, and Cost Sharing**a. Enrollment in Catastrophic Plans (§ 156.155)**

We are making a technical correction to our regulation text in § 156.155, which inadvertently omitted the statutory language in section 1302(e) of the Affordable Care Act indicating that a catastrophic plan provides “no benefits” for any plan year (except for providing coverage for at least 3 primary care visits and preventive health services in accordance with section 2713 of the PHS Act) until the individual has incurred cost-sharing expenses in an amount equal to the annual limitation on cost sharing in effect under section 1302(c)(1) of the Affordable Care Act. Although this provision was not addressed in the proposed rule, it is part of the law governing benefits under catastrophic plans, and we believe it is appropriate to revise the regulation text in this final rule to reflect this fact.

3. Subpart D—Qualified Health Plan Minimum Certification Standards**a. Changes of Ownership of Issuers of Qualified Health Plans in Federally-Facilitated Exchanges (§ 156.330)**

In § 156.330, we proposed that when a QHP issuer in the FFE undergoes a change in ownership, it notify HHS of the change at least 30 days prior to the date of the change and provide the legal name and taxpayer identification number (TIN) of the new owner, as well as the effective date of the change. We also proposed that the new owner must agree to adhere to applicable statutes and regulations.

Comment: One commenter expressed support for the proposed standard and urged HHS to examine any relevant compliance and other issues impacted by the change of ownership at the time notified, such as accreditation status.

Response: HHS intends to examine possible compliance issues related to the change of ownership, including impact on accreditation status, as part of its overall oversight framework.

Comment: One commenter urged flexibility in assessing what constitutes a change in ownership and expressed concern that the standard in § 156.330 could be triggered when transferring blocks of business from one affiliated entity to another.

Response: HHS believes that the notice requirement is minimally burdensome. Further, we believe that it

will be apparent to issuers when the standard is triggered—if recognized by the applicable State, then an issuer would need to comply with § 156.330.

Comment: One commenter asked HHS to exempt changes of ownership within the same holding company from the notice provision and requested additional flexibility in implementing this provision for the 2014 plan year.

Response: We believe that the standard, which would only require notification if the change of ownership is recognized at the State level, is clear. If a change of ownership within the same holding company is required by a State at the State level, then the issuer would need to report it pursuant to § 156.330. We believe that the notice standard is the most minimally burdensome way for HHS to be aware of these important changes, particularly as compared to standards that may be required under State law. Therefore, we do not believe that a transition period is necessary.

Summary of Regulatory Changes

We are finalizing this section as proposed.

4. Subpart E—Health Insurance Issuer Responsibilities With Respect to Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions

a. Definitions (§ 156.400)

Section 156.400 of this subpart includes definitions of a “most generous,” and a “more generous,” plan variation. We proposed to supplement those definitions by clarifying that the definitions of a “least generous,” and a “less generous,” plan variation have the opposite meanings of the existing definitions of a “most generous,” or a “more generous” plan variation. Specifically, we proposed that, as between two plan variations (or a plan variation and a standard plan without cost-sharing reductions), the plan variation or standard plan without cost-sharing reductions designed for the category of individuals first listed in 45 CFR 155.305(g)(3) would be deemed the less generous one. The term less generous was used in the proposed rule to address circumstances in which a QHP issuer would reassign an enrollee from a more generous plan variation to a less generous plan variation (or standard plan without cost-sharing reductions), as discussed in greater detail below. We also proposed a technical modification to change “QHP or plan variation” to “standard plan or plan variation” to clarify that a plan variation is not distinct from a QHP. We received no comments on these

proposed provisions and are finalizing these provisions as proposed.

b. Improper Plan Assignment and Application of Cost-Sharing Reductions (§ 156.410(c) Through (d))

In § 156.410, we proposed to add new paragraphs (c) and (d) to specify the actions a QHP issuer would take if it does not provide the appropriate cost-sharing reductions to an individual, or if it does not assign an individual to the appropriate plan variation (or standard plan without cost-sharing reductions) in accordance with § 156.410(a) through (b) or § 156.425(a) through (b) of this subpart.

Specifically, in paragraph (c)(1), we proposed that if a QHP issuer fails to ensure that an individual assigned to a QHP plan variation receives the cost-sharing reductions required under the applicable plan variation (taking into account the requirement regarding cost sharing previously paid under other plan variations of the same QHP under § 156.425(b) if applicable), the QHP would notify the enrollee of the improper application of the cost-sharing reductions and refund any excess cost sharing paid by or for the enrollee during such period no later than 30 calendar days after discovery of the improper application of the cost-sharing reductions. This refund would be paid to the person or entity that paid the excess cost sharing, whether the enrollee or the provider.

In paragraph (c)(2), we proposed that if a QHP issuer provides an enrollee assigned to a plan variation with greater cost-sharing reductions than required under the applicable plan variation (taking into account § 156.425(b) concerning continuity of deductibles and out-of-pocket amounts if applicable) then the QHP issuer will not be eligible for reimbursement of any excess cost-sharing reductions provided to the enrollee, and may not seek reimbursement from the enrollee or the provider for any of the excess cost-sharing reductions. Because the QHP issuer is responsible for ensuring the cost-sharing reduction is provided appropriately, we noted that we do not believe that the QHP issuer should be able to recoup overpayments of cost-sharing reductions that resulted from the QHP issuer's own errors.

In paragraph (d), we proposed that if a QHP issuer improperly assigns an enrollee to a plan variation (or standard plan without cost-sharing reductions), or does not change the enrollee's assignment due to a change in eligibility in accordance with § 156.425(a), in each case, based on the eligibility and enrollment information or notification

provided by the Exchange, then the QHP issuer would, no later than 30 calendar days after discovery of the improper assignment, reassign the enrollee to the applicable plan variation (or standard plan without cost-sharing reductions) and notify the enrollee of the improper assignment.

Conversely, paragraph (d)(2) proposed that, if a QHP issuer reassigns an enrollee from a less generous plan variation (or a standard plan without cost-sharing reductions) to a more generous plan variation of a QHP to correct an improper assignment on the part of the issuer, the QHP issuer would recalculate the individual's liability for cost sharing paid between the effective date of eligibility required by the Exchange and the date on which the issuer effectuated the change. The QHP issuer would refund any excess cost sharing paid by or for the enrollee during such period, no later than 30 calendar days after discovery of the incorrect assignment. This refund would be paid to the person or entity that paid the excess cost sharing, whether the enrollee or the provider. We sought comment on the proposed approach, including the 30-calendar-day timeframe for QHP issuers to reassign an individual to the correct plan variation and refund any excess cost sharing paid by or for the enrollee. We also sought comment on whether the timeframe should depend on the point in the month the issuer discovers the improper assignment, considering the amount of time issuers may require to effectuate the reassignment, as well as the impact on enrollees due to a delay in reassignment. We noted that the date of the reassignment would not affect the initial effective date of eligibility, and that the enrollee would still be refunded any excess cost sharing paid by or for the enrollee between the effective date of eligibility and the date of the reassignment.

We also noted that we were considering requiring that, for each quarter, a QHP issuer provide to HHS and the Exchange a report beginning in the 2015 benefit year detailing the occurrence of any improper applications of cost-sharing reductions in violation of the standards finalized and proposed in § 156.410(a) and (c) and § 156.425(b), as well as instances when it did not refund any excess cost sharing paid by or for an enrollee in accordance with proposed § 156.410(c)(1) and § 156.410(d)(2), or was reimbursed for excess cost sharing provided in violation of proposed § 156.410(d)(1).

Comment: Several commenters supported holding enrollees harmless for issuer mistakes. A number of

commenters requested clarification that issuers will not be penalized for errors made by Exchanges or enrollee income misrepresentations, and asked HHS to institute policies or procedures that would make it easy for issuers to identify enrollment errors. One commenter suggested that restitution should only occur when the agencies can prove a pattern of willful misconduct, while another commenter suggested that HHS request compensation from an Exchange for errors by the Exchange.

Response: We are clarifying that QHP issuers may rely on the validity of an eligibility determination sent to the QHP issuer by the Exchange, and are not responsible for providing refunds under this provision resulting from an Exchange or enrollee error. However, as noted in the proposed rule, because of the reliance interests of an enrollee in the application of cost-sharing reductions when purchasing particular services, we believe that the QHP issuer should not be able to recover excess funds resulting from issuer error with respect to the application of cost-sharing reductions. We note that this is a different standard from the one we are finalizing for misapplications of the advance payments of the premium tax credit because we believe that an enrollee has lesser reliance interest in miscalculated premiums because the enrollee would have been clearly notified of both the monthly premium and advance payment of the premium tax credit when they enroll in the plan. In contrast, an enrollee may not be aware of the cost-sharing amount for a specific service and might not be able to determine whether the cost-sharing reduction was correctly applied for that particular service at the point the cost sharing is collected.

Comment: Several commenters noted that requiring issuers to provide refunds of cost-sharing reductions to enrollees is inconsistent with standard billing practices in which an issuer bills or credits the enrollee, noting that issuing refunds would require additional resources. Another commenter noted that consistent with current practices and procedures applicable to non-subsidized enrollees, issuers should be able to reprocess claims under the correct plan variation and recoup any excess payment.

Response: In consideration of standard issuer billing practices, the final rule provides that a QHP issuer may apply any excess cost sharing paid by or for an enrollee (except by a provider) to the enrollee's portion of the premium for the remainder of the period of enrollment or benefit year until the

excess is fully applied unless the enrollee requests the refund. (The issuer may also elect to directly refund the enrollee, regardless of whether the enrollee requests the refund.) However, if requested by the enrollee, the QHP issuer would be required to directly refund the enrollee any excess cost sharing paid by or for the enrollee within 45 calendar days of the request. The QHP issuer would refund the enrollee any remaining excess cost-sharing paid by the individual at the end of the period of enrollment or benefit year, and if the excess cost sharing amount was paid by the provider, the QHP issuer would refund to the provider any excess cost sharing paid by provider within 45 calendar days of discovery of the error. We believe that this standard will allow issuers to reimburse enrollees without incurring additional operational costs outside the standard billing practice, while still providing the option for direct refund to the enrollee.

Comment: One commenter asked HHS to clarify that consumer protections also apply to enrollees who are not eligible for a cost-sharing reduction but who are mistakenly enrolled in a silver plan variation by the issuer.

Response: We clarify that the standards in § 156.410(c) and (d) would apply when an enrollee should not be eligible for cost-sharing reductions but is erroneously assigned to a silver plan variation by the QHP issuer.

Comment: One commenter suggested HHS set a threshold date such that, if a QHP issuer discovers an enrollee was assigned to an incorrect plan variation before the 15th of a month, the enrollee would be reassigned to the proper plan variation by the 1st day of the following month, and errors discovered afterwards would be corrected in the following month. Another recommended that consumers be provided advance notice of plan reassignment, and that plans ensure that enrollees have full access to services while the errors are being corrected.

Response: In response to comments, we are modifying the proposed policy to align with existing Exchange regulations regarding the effective date of coverage with respect to special enrollment periods under 45 CFR 155.420(b)(i) and (ii). Section 156.410(d)(1) and (2) now provide that if the QHP issuer discovered the error between the first and fifteenth day of the month, the QHP must reassign the enrollee to the correct plan variation (or standard plan without cost-sharing reductions) by the first day of the following month. If the QHP issuer discovers the error between the sixteen and the last day of the month,

the QHP issuer must reassign the individual to correct plan variation by the first day of the second following month. We note that as with reassignment, we expect issuers to notify enrollees prior to the effective date of the reassignment to prevent enrollee confusion.

Comment: While some commenters supported the 30-day timeframe for refunds, a number of commenters felt that this timeframe is not feasible, given enrollment reconciliation and payment discrepancy processes. One commenter suggested that the final rule adopt a 45-day timeframe, in line with Medicare Part D. Other commenters recommended increasing the timeframe to 60 or 90 days. One commenter suggested that issuers in State Exchanges have the flexibility to work with the Exchange to establish appropriate timelines.

Response: Because cost sharing-reductions are Federal outlays, we believe that it is appropriate to set uniform timeframes for correcting errors related to the underpayment of cost-sharing reductions, regardless of whether the individual receives coverage through a QHP issuer participating in a State Exchange or an FFE. However, taking into consideration current industry practice and the monthly enrollment reconciliation process, as well as the refunds standards specified under 42 CFR 423.800(e) and 42 CFR 423.466(a) with respect to the Medicare Part D low-income subsidy program, we are modifying the proposed policy and are requiring issuers to provide refunds to enrollees within 45 days of the discovery of the error. We believe that this will permit issuers to rectify errors in a timely manner consistent with their current monthly operational cycles, without significantly delaying the reimbursement to the enrollee or provider as applicable.

Comment: Some commenters suggested a de minimis threshold for required refunds, similar to the threshold for the medical loss ratio program.

Response: Unlike the minimum threshold for medical loss ratio rebates under 45 CFR 158.243, the standards proposed under this section were intended to ensure that Federal funds are being used to appropriately subsidize enrollee cost sharing, so that individuals receive the full cost-sharing reductions for which they were determined eligible. Because these refund standards are designed protect low-income individuals from unforeseen costs, we do not believe there should be a de minimis threshold for refunds of cost-sharing reductions.

Comment: Several commenters supported a standard under which an issuer is not required to report on misapplication of cost-sharing reductions unless a minimum error rate occurs, while other commenters stated that all issuers should submit these reports without respect to such a threshold. Other commenters stated that a semi-annual or annual report should be required for the initial years. One commenter believed that such quarterly reports would duplicate the information provided via enrollment reconciliation and the payment discrepancy reporting process. The same commenter was also concerned about the implications of such self-reporting under Federal laws, and recommended a safe harbor from enforcement remedies for any good faith reporting. Another commenter suggested that HHS give State Exchanges flexibility to decide the timing of such reports.

Response: In response to comments, we are not establishing a quarterly reporting standard with respect to the improper application of cost-sharing reductions or improper assignments to plan variations (or standard plans without cost-sharing reductions). However, we require this reporting as part of the annual reporting requirement set forth under § 156.480(b). We believe that annual reporting of these errors will allow HHS to track the occurrence of these errors and identify any problems that affect multiple issuers without duplicating any existing interim reporting requirements. We do not intend to create a safe harbor for misreported information, and expect that issuers will make a good faith effort to accurately report these errors.¹⁸

Comment: One commenter asked how claims submitted for premium stabilization programs would be affected by erroneous cost-sharing reduction amounts.

Response: As noted in 45 CFR 156.430(d), HHS will perform periodic reconciliations of any advance payments of cost-sharing reductions provided to the QHP issuer with the actual amount of cost-sharing reductions provided to enrollees and reimbursed to providers by the QHP issuers. This calculation is not required for the risk adjustment or reinsurance programs, and will be completed prior to the deadline for the risk corridors program.

Summary of Regulatory Changes

We are finalizing these provisions with the following modifications. We are amending paragraphs (c) and (d) to increase the time period for issuing refunds from 30 days to 45 days of discovery of the error. We are also modifying these paragraphs to provide that the QHP issuer may provide the refund by applying the total excess cost sharing paid by or for the enrollee to the enrollee's portion of the premium for the remainder of the period of enrollment or benefit year until the excess is fully applied, except that the QHP issuer must refund the enrollee the excess cost sharing within 45 days of the enrollee's request or the end of the period of enrollment or benefit year. (Any cost-sharing paid by the provider will still be refunded to the provider within 45 days of discovery of the error.) Additionally, we are re-designating subparagraphs (d)(1) and (d)(2) as (d)(3) and (4), and adding two new subparagraphs (d)(1) and (d)(2), which set forth a timeframe for effectuating a reassignment to the correct plan variation.

c. Payment for Cost-Sharing Reductions (§ 156.430)

In the 2014 Payment Notice, we established a payment approach under which monthly advance payments will be made to QHP issuers to cover projected cost-sharing reduction amounts, and then, after the close of the benefit year, the advance payments and the actual cost-sharing reduction amounts provided during the benefit year will be reconciled. In 45 CFR 156.430(c)(1), we established standards for QHP issuers to submit data to HHS detailing the amount of cost sharing the enrollees in each plan variation paid, as well as the amount of cost sharing the enrollees would have paid under the standard plan. The value of the cost-sharing reductions provided is the difference of these two amounts. We also finalized at 45 CFR 156.430(c)(2) a methodology (referred to as the "standard methodology") for calculating the amount of cost sharing that the enrollees would have paid under the standard plan, but for the cost-sharing reductions. Under the standard methodology, QHP issuers apply the cost-sharing requirements for the standard plan to the allowed costs for each plan variation policy; in effect, each claim would be processed twice: once using the cost-sharing structure that would have been in place if the individual were ineligible for cost-sharing reductions, and once using the reduced cost-sharing structure in the

applicable plan variation for which the individual is eligible.

In the Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 interim final rule, we established in § 156.430(c)(4) an alternate methodology for calculating the amount of cost sharing that the enrollees would have paid under the standard plan for the purpose of reconciliation of the advance payments of the cost-sharing reductions. Under this alternate methodology (referred to as the "simplified methodology"), QHP issuers calculate the amount of cost sharing that the enrollees would have paid under the standard plan by using formulas based on certain summary cost-sharing parameters of the standard plan, applied to the total allowed costs for each policy. With this approach, we sought to balance the need to safeguard Federal funds with the goal of lessening the administrative burden on QHP issuers. We stated that we anticipated that after an appropriate transition period, all QHP issuers would be required to use the standard methodology, and sought comments on how long the transition period should be. We also noted that in later years, we would consider alternative approaches for reimbursing QHP issuers. For example, once more data is available, we could change to a capitated payment system as permitted in section 1402(c)(3)(B) of the Affordable Care Act. However, such a change would require access to data on the utilization and cost-sharing patterns of individuals eligible for cost-sharing reductions.

In § 156.430(c)(3)(i) of the interim final rule, we provided that a QHP issuer must notify HHS prior to the start of each benefit year whether or not it is selecting the simplified methodology for the benefit year. In paragraph (c)(3)(ii), we specified that if the QHP issuer selects the simplified methodology, it must apply the simplified methodology to all plan variations it offers on the Exchange for a benefit year. Since the simplified methodology is intended for issuers whose systems are not yet capable of implementing the standard methodology, in paragraph (c)(3)(iii) we specified that the QHP issuer may not select the simplified methodology if it did not select the simplified methodology for the prior benefit year. We also set forth standards governing the selection of a methodology if a QHP issuer merges with or acquires another QHP issuer on the Exchange, or acquires a QHP offered on the Exchange from another issuer. In paragraph (c)(3)(iv), we provided that if each of the affected parties had selected a different methodology for the benefit year, then

¹⁸ We note that many of the errors that will be the subject of the first annual report and to our 2014 policy of nonenforcement of CMPs for good faith, which we codified at 45 CFR 156.800(c).

notwithstanding paragraphs (c)(3)(ii) and (iii), for the benefit year in which the merger or acquisition took place, the QHP issuer must continue to use the methodology selected prior to the start of the benefit year for each plan variation (whether or not the selection was made by that issuer), and for the next benefit year, the QHP issuer may select either methodology, subject to the requirement in paragraph (c)(3)(ii) that a QHP issuer select the same methodology for all plan variations it offers on the Exchange for the benefit year.

In this final rule, we are generally finalizing the standards related to the simplified methodology as established in the interim final rule, with minor clarifying edits to paragraph (c)(3)(iii) and (iv), and we are modifying paragraph (c)(3) to specify that QHP issuers may only choose to use the simplified methodology for benefit years 2014 through 2016. For the 2014 benefit year, HHS intends to contact each QHP offering individual market coverage through an Exchange in November, which will prompt the issuer to notify HHS prior to the start of the benefit year whether or not it selects the simplified methodology for the benefit year. We received a number of comments on the selection of the methodology and the transition period.

Comment: The majority of commenters supported the simplified methodology. Many noted that the simplified methodology will likely reduce QHP issuers' short-term costs and administrative burden. Two commenters argued that issuers should be permitted to choose between the simplified and standard methodologies indefinitely because of the many new functions that issuers will be performing in Exchanges and because the simplified methodology should produce results that are similar to the standard methodology. However, one commenter argued that the choice of methodologies could inflate Federal costs because QHP issuers will likely choose whichever methodology results in the largest payments. That commenter suggested that QHP issuers should only be permitted to choose between the simplified and standard methodologies for the first two years. Other commenters argued that the standards in § 156.430(c)(3) on selecting a methodology should adequately safeguard against potential gaming. In addition, commenters noted that it could take QHP issuers up to 18 months to develop the systems necessary to support the standard methodology, and that therefore HHS should provide at least one year's notice before requiring a transition to the standard

methodology. Several commenters also supported a shift to a capitated payment system in future years, though one noted that it will be important to require QHP issuers to use the standard methodology for at least two years so that adequate data can be collected on the value of the cost-sharing reductions, which may vary significantly between plan variations and enrollees. The same commenter suggested that HHS should ensure that QHP issuers are adequately compensated so that issuers provide cost-sharing reductions as required, including cost-sharing reductions for American Indians and Alaska Natives.

Response: To allow QHP issuers adequate time to develop their systems to support the standard methodology, we are establishing a three-year transition period during which QHP issuers may use the simplified methodology, provided that they choose the simplified methodology prior to the start of benefit year 2014. We are modifying § 156.430(c)(3) to specify that the option to use the simplified methodology will extend only through benefit year 2016. As a result, all QHP issuers offering coverage through the individual market of an Exchange must use the standard methodology to submit the data described in 45 CFR 156.430(c)(1) for cost-sharing reductions provided for benefit year 2017. We will continue to consider alternative approaches for reimbursing QHP issuers for the future, including a capitated payment system. We believe that both methods of calculating the value of cost-sharing reductions provided will be accurate so that QHP issuers are adequately compensated for providing cost-sharing reductions to all populations.

In § 156.430(c)(4) of the interim final rule we set forth a simplified methodology for calculating the amount of cost sharing that enrollees would have paid under the standard plan without cost-sharing reductions. We established that a QHP issuer selecting the simplified methodology must calculate the amount that the enrollees would have paid under the standard plan by applying four summary, or "effective cost-sharing parameters" for the standard plan—the effective deductible, the effective pre-deductible coinsurance rate, the effective post-deductible coinsurance rate, and the effective claims ceiling—to the total allowed costs paid for EHB under the policy (that is, the policy with cost-sharing reductions) for the benefit year. This simplified methodology allows QHP issuers to calculate enrollee liability under the standard plan using a standardized methodology that does

not require complex readjudication of claims. Specifically, in § 156.430(c)(4)(i), we detailed the process for calculating the amount that enrollees would have paid under the standard plan under the simplified methodology, depending on the utilization pattern under the policy. We described these calculations using Formulas A, B, and C, detailed in § 156.430(c)(4)(i)(A), (B) and (C). In § 156.430(c)(4)(ii) (renumbered as (c)(4)(iii) in this final rule), we defined the effective cost-sharing parameters for the standard plan, and established that these parameters must be calculated separately for self-only coverage and other than self-only coverage. We also noted that if a QHP issuer has entirely separate cost-sharing parameters for pharmaceutical and medical services, the QHP issuer may elect to develop separate sets of effective cost-sharing parameters for pharmaceutical and medical services.

We sought comments on these effective cost-sharing parameters and formulas for calculating the amount that enrollees would have paid under the standard plan, and whether this methodology appropriately categorizes policies based on utilization patterns. We also sought suggestions for alternative methodologies that might provide more accurate estimates of the amount that enrollees would have paid under the standard plan, while preserving the administrative efficiency of the simplified methodology. In response to comments, we are generally finalizing the simplified methodology as established in the interim final rule, with some modifications to address unique benefit structures and to reduce potential biases in the formulas identified by commenters. We are also clarifying how QHP issuers should calculate the effective cost-sharing parameters for self-only coverage, other than self-only coverage, medical coverage, and pharmaceutical coverage. Lastly, we are clarifying how the simplified methodology should apply when an enrollee is assigned to a different plan variation or is assigned from a plan variation to the standard plan (or vice versa) during the course of the benefit year.

Comment: In general, commenters supported the simplified methodology, and no commenters suggested any significantly different methodology. Some commenters stated that the simplified methodology will produce results that are not substantially different from the standard methodology, but others proposed certain modifications that they said would improve the accuracy of the

methodology, particularly when applied to certain types of plan designs.

Specifically, three commenters noted that the effective deductible and effective claims ceiling parameters, as established in the interim final rule, may result in the overestimation or underestimation of enrollee liability under a standard plan with certain benefit structures. For example, because the effective deductible was defined as the weighted average of the deductibles for the standard plan, excluding services not subject to the deductible, Formula B (described in § 156.430(c)(4)(i)(B)) may overestimate the cost sharing under the standard plan for those enrollees who incur claims costs greater than the effective deductible, because they receive services that are not subject to the deductible. In addition, because the effective claims ceiling was calculated based on the annual limitation on cost sharing, which may only apply to in-network benefits (as described in 45 CFR 156.130(c)), Formula C (described in § 156.430(c)(4)(i)(C)) may underestimate cost sharing under the standard plan for enrollees who incur large out-of-network claims. In light of these potential biases, one commenter suggested that in-network cost sharing should be calculated separately from out-of-network cost sharing. Other commenters suggested that the QHP issuer's actuary should be allowed greater flexibility in the calculation of an average deductible and an average claims ceiling, based on the actual claims experience of enrollees in the standard plan. One commenter suggested that the issuer's actuary should be required to submit an actuarial memorandum with a justification of any modifications to the effective cost-sharing parameters, demonstrating that the modifications were necessary due to the benefit design and result in a more accurate replication of the standard plan's cost sharing.

We also received a comment asking how mid-year changes in enrollee eligibility for cost-sharing reductions would affect the application of the simplified methodology.

Response: Overall, we believe the simplified methodology will yield results that are substantially similar to the results that would be produced using the standard methodology. In addition, we believe it is important that issuers choosing the simplified methodology use standard formulas and parameters to reduce the analytical burden on issuers, ensure the transparency of the calculations, and reduce the potential for gaming. Nevertheless, in response to these comments, we are finalizing several

modifications to the simplified methodology to improve the accuracy of the calculations.

First, we are making several minor edits to clarify the standards originally established. We are reordering some of the text in the definitions of the effective pre-deductible and effective post-deductible coinsurance rates to mirror the structure of the other definitions. Also, in response to the comment asking about mid-year changes in eligibility for cost-sharing reductions, we are clarifying in § 156.430(c)(4) that the effective cost-sharing parameters, or one minus the actuarial value of the standard plan, as appropriate, should be applied to the total allowed costs for EHB for the benefit year under each policy that was assigned to a plan variation for any portion of the benefit year. We note that a similar standard would apply to the standard methodology. This will ensure that QHP issuers are reimbursed for cost-sharing reductions provided to enrollees that are only assigned to a plan variation for a portion of the year. We are also clarifying in paragraphs (c)(4)(ii) and (iii) that the effective cost-sharing parameters should be calculated based on policies assigned to the standard plan without cost-sharing reductions for the entire benefit year. If a particular enrollee cancels his or her standard plan policy mid-year, or is re-assigned to a plan variation, the costs incurred by that enrollee should not be included in the calculation of the effective cost-sharing parameters for the standard plan because partial-year data could reduce the accuracy of the parameters. We also considered requiring QHP issuers to separate costs by month based on the assignment of an enrollee to a particular plan variation or standard plan, or requiring QHP issuers to annualize costs across the benefit year. However, these approaches would have significantly complicated the methodology and potentially reduced its accuracy.

Second, in response to comments that Formula B (described in § 156.430(c)(4)(i)(B)) may overestimate the cost sharing under the standard plan if the enrollees receive services that are not subject to a deductible, we are modifying several of the formulas and effective cost-sharing parameters to more accurately estimate cost sharing for services that are subject to a deductible and services that are not subject to a deductible. Specifically, in paragraph (c)(4)(iii)(A), we are defining the average deductible to be the weighted average deductible for the standard plan (weighted by allowed costs for EHB under the standard plan for the benefit year that are subject to

each separate deductible, and excluding services that are not subject to any deductible). Conversely, in paragraph (c)(4)(iii)(B), we are defining effective non-deductible cost sharing to be calculated based only on standard plan policies with total allowed costs for EHB for the benefit year that are above the effective deductible but for which associated cost sharing for EHB is less than the annual limitation on cost sharing, and equal to the average portion of total allowed costs for EHB that are *not* subject to any deductible for the standard plan for the benefit year incurred for standard plan enrollees and payable by the enrollees as cost sharing. We are also modifying the definition of effective deductible (which was initially set forth in paragraph (c)(4)(ii)(A), but has been renumbered in this final rule to be paragraph (c)(4)(iii)(C)), to be the sum of the average deductible and the average total allowed costs for EHB that are *not* subject to any deductible for the standard plan for the benefit year. The average total allowed costs for EHB that are not subject to any deductible for the standard plan for the benefit year must be calculated based only on standard plan policies with total allowed costs for EHB for the benefit year that are above the average deductible but for which associated cost sharing for EHB is less than the annual limitation on cost sharing. Lastly, we are making conforming modifications to the definition of effective claims ceiling (which was initially set forth in paragraph (c)(4)(ii)(D), but has been renumbered in this final rule to be paragraph (c)(4)(iii)(F)), to be calculated as follows:

$$ECC = ED + ((AL - AD - NDCS) / \text{PostD})$$

Where,
 ECC = the effective claims ceiling;
 ED = the effective deductible;
 AL = the annual limitation on cost sharing;
 AD = the average deductible;
 NDCS = the effective non-deductible cost sharing; and
 PostD = the effective post-deductible coinsurance rate.

Building off of these new definitions, we are modifying the definition of effective post-deductible coinsurance rate (initially set forth in paragraph (c)(4)(ii)(C), but renumbered as paragraph (c)(4)(iii)(E)) to be calculated as follows:

$$\text{PostD} = (\text{CSD}_p) / (\text{TACD}_p - \text{AD})$$

Where,
 PostD = the effective post-deductible coinsurance rate;
 CSD_p = the portion of average allowed costs for EHB subject to a deductible incurred for enrollees for the benefit year, and

payable by the enrollees as cost sharing other than through a deductible; AD = the average deductible; and TACD_p = the average total allowed costs for EHB subject to a deductible incurred for those enrollees for the benefit year (we distinguish TACD_p from the TACD_i; TACD_p refers to *average* total allowed costs for EHB subject to a deductible for all the policies that are part of the calculation—which in this case, are standard plan policies with total allowed costs for EHB for the benefit year that are above the effective deductible but for which associated cost sharing for EHB is less than the annual limitation on cost sharing (that is, policies that do not incur enough cost sharing for the annual limitation on cost sharing to affect the cost sharing), while TACD_i refers to the total allowed costs for EHB subject to a deductible for a particular policy).

These terms are then used in a modified Formula B (described in § 156.430(c)(4)(i)(B)), and detailed below, for plan variation policies with total allowed costs for EHB for the benefit year that are greater than the effective deductible but less than the effective claims ceiling, to calculate the amount that enrollees would have paid under the standard plan without cost-sharing reductions.

Formula B: $C = AD + NDCS + ((TACD_i - AD) * PostD)$

Where,

C = the amount that the enrollees in a particular policy would have paid under the standard plan without cost-sharing reductions;

AD = the average deductible;

NDCS = the effective non-deductible cost sharing;

TACD_i = the total allowed costs under the policy for the benefit year for EHB that are subject to a deductible;

PostD = the effective post-deductible coinsurance rate; and

$((TACD_i - AD) * PostD)$ is calculated only if positive.

We believe this formula will more accurately capture cost sharing in plans that subject certain services to deductibles but exempt others (while imposing other forms of cost sharing).

In addition, we note that the new definition of effective deductible will likely cause some plan variation policies that previously would have been subject to calculation under Formula B to become subject to Formula A, which we are finalizing as established in the interim final rule. As described in paragraph (c)(4)(i)(A), Formula A applies to plan variation policies with total allowed costs for EHB for the benefit year that are less than or equal to the effective deductible, and calculates the amount that the enrollees would have paid under the standard plan as the total allowed costs

for EHB under the policy for the benefit year, multiplied by the effective pre-deductible coinsurance rate.

We are also adding a paragraph to clarify how the simplified methodology should be applied to HMO-like plans (or plans with HMO-like characteristics in certain subgroups) with no costs or few costs that are subject to a deductible. Specifically, in paragraph (c)(4)(vi) we provide that if more than eighty percent of the total allowed costs for EHB for the benefit year under a standard plan for a subgroup that requires a separate set of effective cost-sharing parameters pursuant to paragraph (c)(4)(ii) are not subject to a deductible, then (i) The average deductible, the effective non-deductible cost sharing, and the effective deductible for the subgroup equal zero; (ii) the effective pre-deductible coinsurance rate for the subgroup is equal to the effective post-deductible coinsurance rate for the subgroup, which is determined based on all standard plan policies for the applicable subgroup for which associated cost sharing for EHB is less than the annual limitation on cost sharing, and calculated for the applicable subgroup as the proportion of the total allowed costs for EHB under the standard plan for the benefit year incurred for standard plan enrollees and payable as cost sharing (including cost sharing payable through a deductible); and (iii) the amount that enrollees in the applicable subgroup in plan variation policies with total allowed costs for EHB for the benefit year that are less than the effective claims ceiling would have paid under the standard plan must be calculated using the formula in § 156.430(c)(4)(i)(A). In effect, we are merging Formulas A and B for these plans (or these subgroups), and are removing the distinction between the calculation of cost sharing for costs incurred before the deductible is met versus the calculation after the deductible is met. This modification should simplify calculations for issuers of these plans (or these subgroups), and improve the accuracy of the simplified methodology we are finalizing here for these plans (or these subgroups).

Lastly, in response to comments, we are modifying Formula C (described in § 156.430(c)(4)(i)(C)), which applies to plan variation policies with total allowed costs for EHB for the benefit year that are greater than or equal to the effective claims ceiling, and is used to calculate the amount of cost sharing that those enrollees would have paid under the standard plan. First, we are simplifying the formula established in the interim final rule. Second, because the annual limitation on cost sharing

may not apply to benefits provided out-of-network (as allowed under 45 CFR 156.130(c)), we are allowing issuers to elect to use, on a policy-by-policy basis, the standard methodology to calculate the amount of cost sharing that such enrollees would have paid under the standard plan. This modification will allow QHP issuers to capture the value of cost-sharing reductions for enrollees who incur large claim amounts for services from out-of-network providers.

Comment: Commenters noted that due to statistical aberrations under the simplified methodology, it is possible—though unlikely—that the calculated amount of cost sharing that enrollees would have paid under the standard plan could be less than what they actually paid under the plan variation. The commenter suggested that the amount that the enrollees would have paid in cost sharing under the standard plan be set at no less than what they paid under the plan variation.

Response: Although we acknowledge that in certain cases, the calculated amount of cost sharing that enrollees would have paid under the standard plan could be less than what the enrollees in a particular policy actually paid under the plan variation, any such results would likely be balanced by results for other policies that overestimate the cost sharing that the enrollees would have paid under the standard plan. As a result, we do not believe it is necessary to modify the simplified methodology. However, we note that we do not intend to charge a QHP issuer for cost-sharing reductions across all enrollees in a plan variation in the very unlikely event that the simplified methodology suggests that a negative amount of cost-sharing reductions were provided to all such enrollees in the aggregate during the benefit year.

Comment: We received comments on § 156.430(c)(4)(ii) of the interim final rule, which directs issuers to calculate the effective cost-sharing parameters separately for self-only coverage and other than self-only coverage, and provides the option to calculate separate parameters for pharmaceutical and medical services if the QHP has entirely separate cost-sharing parameters for each of these types of services. Two commenters suggested that issuers should be allowed to calculate a single set of effective cost-sharing parameters if the cost-sharing parameters of the other than self-only coverage are better replicated at the individual level (for example, for plan designs applying individual level deductibles first). The same commenters also suggested that issuers should be allowed to calculate

separate parameters for pharmaceutical and medical services even when the costs are not adjudicated by a separate vendor. Similarly, for QHPs in which a large portion of allowed charges are subject to co-pays but not deductibles, the commenters suggested that issuers should be allowed to calculate separate effective cost-sharing parameters for those services. Another commenter suggested that QHP issuers should calculate separate effective cost-sharing parameters for benefits provided in-network versus benefits provided out-of-network because enrollee liability often differs significantly for these benefits. The commenter also suggested that if the QHP issuer made no reductions in cost sharing for benefits provided out-of-network (that is, the out-of-network cost-sharing parameters for the standard plan match the out-of-network cost-sharing parameters for the plan variation), the QHP issuer should be able to exclude costs for benefits provided out-of-network and the applicable cost-sharing parameters from the simplified methodology calculations. Similarly, the QHP issuer should be allowed to exclude costs for benefits paid in full by the issuer for both the standard plan and plan variations, with no enrollee liability, since there are no cost-sharing reductions for these benefits. Lastly, one commenter requested clarification on whether the effective cost-sharing parameters for a QHP should be calculated separately for each rating area, or across an entire State.

Response: In response to comments, we are adding a new paragraph (c)(4)(ii) and making conforming edits to paragraphs (c)(4)(i) through (v) of this section to clarify which subgroups of costs require a unique set of effective cost-sharing parameters. In paragraph (c)(4)(ii)(A), we state that if the standard plan has separate cost-sharing parameters for self-only coverage and other than self-only coverage, but does not have separate cost-sharing parameters for pharmaceutical and medical services, the QHP issuer must calculate and apply separate sets of effective cost-sharing parameters based on the costs of enrollees in the standard plan with self-only coverage, and the costs of enrollees in the standard plan with other than self-only coverage. We clarify that if the cost-sharing parameters for other than self-only coverage accumulate at the enrollee-level and match the parameters for self-only coverage, then the standard plan would not be subject to subparagraph (c)(4)(ii)(A) or (C).

In paragraph (c)(4)(ii)(B), we clarify that if the standard plan has separate

cost-sharing parameters for pharmaceutical and medical services, but does not have separate cost-sharing parameters for self-only coverage and other than self-only coverage, the QHP issuer must calculate and apply separate sets of effective cost-sharing parameters based on the medical costs of the enrollees in the standard plan, and the pharmaceutical costs of the enrollees in the standard plan. This standard is not tied to whether or not the pharmaceutical costs are adjudicated separately by a vendor, but depends on whether or not the cost sharing accumulates to separate deductibles and annual limitations on cost sharing.

Lastly, in paragraph (c)(4)(ii)(C), we state that if the standard plan has separate cost-sharing parameters for self-only coverage and other than self-only coverage, and also has separate cost-sharing parameters for pharmaceutical and medical services, the QHP issuer must calculate and apply separate sets of effective cost-sharing parameters based on the medical costs of enrollees in the standard plan with self-only coverage, the pharmaceutical costs of enrollees in the standard plan with self-only coverage, the medical costs of enrollees in the standard plan with other than self-only coverage, and the pharmaceutical costs of enrollees in the standard plan with other than self-only coverage. While these new standards in paragraph (c)(4)(ii) may require additional calculations, enrollee liability can vary significantly between these subgroups, as noted by commenters, and as a result, we believe that separate effective cost-sharing parameters for each subgroup of costs will often lead to more accurate results.

For example, if a QHP is subject to the standards in paragraph (c)(4)(ii)(C), the QHP issuer must create four sets of effective cost-sharing parameters. One of the sets of effective cost-sharing parameters would be calculated based on self-only coverage of medical services (for example, the average deductible would be the medical deductible for self-only coverage). The effective cost-sharing parameters for the subgroup would then be applied to the total allowed medical costs for EHB of enrollees with self-only coverage under a plan variation policy, as described in paragraph (c)(4)(i). To determine the total amount that enrollees in the plan variation policy with self-only coverage would have paid under the standard plan without cost-sharing reductions, the QHP issuer would add the amounts calculated pursuant to paragraph (c)(4)(i) for each subgroup of costs (self-

only medical costs and self-only pharmaceutical costs).

In relation to in-network and out-of-network costs, we clarify that although QHP issuers are not required to reduce out-of-network cost sharing to meet the actuarial value requirements for the silver plan variations, as described on page 15481 of the 2014 Payment Notice, if a QHP issuer chooses to reduce out-of-network cost sharing, they will receive reimbursement for those reductions. In addition, QHP issuers must eliminate cost sharing for both in-network and out-of-network covered EHB for the zero cost sharing plan variation, as well as for the limited cost sharing plan variation when the service is furnished by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization, or through referral under contract health services, as described in 45 CFR 156.420(b). Nevertheless, we are not requiring, nor allowing, QHP issuers to calculate separate effective cost-sharing parameters for in-network and out-of-network costs. We believe that the modifications to Formula C should address much of the bias in the simplified methodology that could be caused by differences in cost-sharing parameters for in-network and out-of-network services. In addition, we hope to limit the number of plans that do not meet the minimum credibility standard, which as described below and in paragraph (c)(4)(v), requires QHP issuers to use an actuarial value methodology to calculate the amount that enrollees would have paid under the standard plan, if a standard plan has enrollment of fewer than 12,000 member months for a particular subgroup. We believe that it is possible that a large number of standard plans would not have 12,000 member months for enrollees with out-of-network claims costs above the applicable effective deductible. Therefore, we will not provide for separate calculations for in-network and out-of-network costs.

In response to the comments suggesting that QHP issuers should be allowed to exclude costs for benefits without cost-sharing reductions, we note that in many cases, these costs would accumulate towards certain cost-sharing parameters, such as a deductible or the annual limitation on cost sharing. Therefore, we are not finalizing any change permitting an issuer to exclude such claims. As discussed above, to address plans with cost-sharing structures where a large proportion of costs are not subject to a deductible, we have provided for a simplified, coinsurance-based calculation in paragraph (c)(4)(vi). Finally, we note

that QHP issuers cannot create separate effective cost-sharing parameters for each rating area.

In § 156.430(c)(4)(iii) of the interim final rule, we established reporting standards for QHP issuers that elect to use the simplified methodology. We specified that QHP issuers must submit to HHS, in the manner and timeframe established by HHS: The effective deductible; the effective pre-deductible coinsurance rate; the effective post-deductible coinsurance rate; the effective claims ceiling; and a memorandum developed by a member of the American Academy of Actuaries in accordance with generally accepted actuarial principles and methodologies that describes how the QHP issuer calculated the effective cost-sharing parameters for the standard plan. This information will allow HHS to ensure that QHP issuers are calculating the effective cost-sharing parameters correctly. We sought comments on whether HHS should require any other data submissions or establish any additional standards to oversee these provisions.

Comment: One commenter recommended that HHS put in place robust processes to monitor QHP issuers using the simplified methodology to limit the potential for overpayments. The commenter suggested that HHS reserve the authority to review and approve all QHP issuer submissions for the simplified methodology and the resulting reconciliation amount—particularly if such amounts are substantially different from the advance payment amounts. Another commenter suggested that HHS collect detailed data on the payments made by QHP issuers to providers to ensure that providers are reimbursed, particularly providers associated with the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization.

Response: To ensure that QHP issuers using either the standard or simplified methodology submit accurate information for cost-sharing reduction payment reconciliation, we are finalizing cost-sharing reduction oversight standards in § 156.480 of this final rule. Specifically, § 156.480(c) provides HHS with the authority to audit an issuer to assess compliance with the cost-sharing reduction standards, including standards related to reconciliation and provider reimbursement, detailed in 45 CFR 156.430(c).

We are also clarifying in this final rule the standards for reporting information on the effective cost-sharing parameters. Specifically, we are renumbering the

paragraph on reporting as paragraph (c)(4)(iv), and specifying that a QHP issuer using the simplified methodology must submit to HHS, in the manner and timeframe established by HHS, the effective cost-sharing parameters, calculated pursuant to paragraph (c)(4)(iii), for each standard plan offered by the QHP issuer in the individual market through the Exchange for each set of circumstances described in paragraph (c)(4)(ii). Therefore, if a QHP issuer must calculate multiple sets of effective cost-sharing parameters as described in paragraph (c)(4)(ii), the QHP issuer must submit each set of parameters to HHS. A QHP issuer may submit one actuarial memorandum as long as it describes how the QHP issuer calculated each set of effective cost-sharing parameters for each standard plan. We will provide guidance on the manner and timeframe of this submission in the future.

As discussed in the interim final rule, we recognize that because the effective pre- and post-deductible coinsurance rates are calculated based on the average experience of the enrollees in the standard plan, low enrollment in the standard plan could lead to inaccurate effective coinsurance rates. Therefore, we provided additional standards related to the simplified methodology in § 156.430(c)(4)(iv) to address credibility concerns that may result from low enrollment in the standard plan. We established that if a standard plan has an enrollment during the benefit year of fewer than 12,000 member months (that is, the sum of the months that each enrollee is covered by the plan) in any of four subgroups, and the QHP issuer has selected the simplified methodology, then the QHP issuer must calculate the amount that all enrollees in the plan variation (in all subgroups) would have paid under the standard plan by applying the standard plan's actuarial value, as calculated under § 156.135, to the allowed costs for EHB for the enrollees for the benefit year. The credibility standard of 12,000 member months aligns with a similar standard used by the Medicare Part D program; however, we sought comments on the appropriate number of member months to achieve credible use of the simplified methodology. We also sought comments on whether the standard plan's actuarial value applied to the allowed costs for EHB for enrollees for the benefit year would provide an appropriate estimate of the amount of cost sharing that enrollees would have paid under the standard plan without cost-sharing reductions, or whether an alternative approach would be more

appropriate. Last, we requested comments on the composition of the subgroups, whether they appropriately divide enrollees based on their utilization patterns, whether any subgroups are required, and whether low enrollment in one subgroup should prompt the QHP issuer to use the actuarial value for enrollees in all subgroups or just the subgroup with low enrollment.

Comment: We received one comment on this section, suggesting that the credibility standard should apply to both the standard plan and the plan variations because even if the effective cost-sharing parameters are based on at least 12,000 member months, applying them to a small number of plan variation policies could produce unusual results. The same commenter noted that because actuarial value is a measure of the issuer's liability, one minus the actuarial value should be applied to the total allowed costs for EHB for each policy offered under the plan variation for the benefit year in order to determine the cost sharing that enrollees would have paid under the standard plan.

Response: In response to these comments, we are correcting the instructions for calculating enrollee cost sharing based on actuarial value in the renumbered paragraph (c)(4)(v). We are not expanding the credibility standard to apply to enrollment in each plan variation since this would likely require many more QHP issuers to use the standard or actuarial value methodology, rather than the simplified methodology. However, we are adding a "cap" to the actuarial methodology, such that QHP issuers whose standard plan does not meet the credibility standard must calculate the amount that enrollees would have paid under the standard plan as the lesser of the annual limitation on cost sharing for the standard plan or the amount derived through the actuarial value methodology. This approach will reduce the likelihood that plan variations with small enrollment will report amounts that are materially inaccurate.

We are also modifying paragraph (c)(4)(v) to align with the standards established in paragraph (c)(4)(ii) and to clarify how the minimum credibility standard should be applied to each subgroup. In addition, we are removing the minimum credibility standard described in the interim final rule in subparagraphs (c)(4)(iv)(A) and (C), related to enrollees with total allowed costs for EHB for the benefit year that are less than or equal to the effective deductible. This change should simplify the credibility analysis, with little

impact on the ultimate credibility of the effective cost-sharing parameters because it is unlikely that a standard plan would have adequate enrollment with costs above the effective deductible, but low enrollment with costs below the effective deductible. As discussed in the interim final rule, a subgroup is not necessary for enrollees with cost sharing for EHB above the annual limitation on cost sharing because the experience of this population is not used to calculate the effective cost-sharing parameters.

Therefore, in § 156.430(c)(4)(v) of this final rule, we establish that if a QHP issuer's standard plan meets certain criteria, and the QHP issuer has selected the simplified methodology described in this paragraph (c)(4), then the QHP issuer must calculate the amount that enrollees in the plan variation would have paid under the standard plan without cost-sharing reductions as the lesser of the annual limitation on cost sharing for the standard plan or the amount equal to the product of, (x) one minus the standard plan's actuarial value, as calculated under 45 CFR 156.135, and (y) the total allowed costs for EHB for the benefit year under each policy that was assigned to a plan variation for any portion of the benefit year.

In subparagraphs (A) through (D) of § 156.430(c)(4)(v), we detail the minimum credibility criteria that prompt a QHP issuer to use the actuarial value methodology:

(A) The standard plan has separate cost-sharing parameters for self-only coverage and other than self-only coverage, does not have separate cost-sharing parameters for pharmaceutical and medical services, and has an enrollment during the benefit year of fewer than 12,000 member months for coverage with total allowed costs for EHB for the benefit year that are greater than the effective deductible, but for which associated cost sharing for EHB is less than the annual limitation on cost sharing, in either of the following categories: (i) Self-only coverage, or (ii) other than self-only coverage.

(B) The standard plan has separate cost-sharing parameters for pharmaceutical and medical services, does not have separate cost-sharing parameters for self-only coverage and other than self-only coverage, and has an enrollment during the benefit year of fewer than 12,000 member months for coverage with total allowed costs for EHB for the benefit year that are greater than the effective deductible, but for which associated cost sharing for EHB is less than the annual limitation on cost sharing, in either of the following

categories: (i) Coverage of medical services, or (ii) coverage of pharmaceutical services.

(C) The standard plan has separate cost-sharing parameters for self-only coverage and other than self-only coverage, has separate cost-sharing parameters for pharmaceutical and medical services, and has an enrollment during the benefit year of fewer than 12,000 member months for coverage with total allowed costs for EHB for the benefit year that are greater than the effective deductible, but for which associated cost sharing for EHB is less than the annual limitation on cost sharing, in any of the following categories: (i) Self-only coverage of medical services, (ii) self-only coverage of pharmaceutical services, (iii) other than self-only coverage of medical services, or (iv) other than self-only coverage of pharmaceutical services.

(D) The standard plan does not have separate cost-sharing parameters for pharmaceutical and medical services, does not have separate cost-sharing parameters for self-only coverage and other than self-only coverage, and has an enrollment during the benefit year of fewer than 12,000 member months with total allowed costs for EHB for the benefit year that are greater than the effective deductible, but for which associated cost sharing for EHB is less than the annual limitation on cost sharing.

In the interim final rule, we noted the possibility that for a very small number of plans with unique cost-sharing structures, the amounts that enrollees would have been paid under the plan might not be fairly estimated using the simplified methodology. We considered a process in which a QHP issuer of such a plan may notify HHS if it believes that this is the case for one or more of its plans. We considered requiring such a notification within ninety days of the beginning of the applicable benefit year, and we considered requiring the QHP issuer to provide information on the unique plan design supporting the QHP issuer's assessment.

Under this approach, if HHS were to agree with the assessment, we considered requiring the QHP issuer to calculate the amount that enrollees would have paid under the standard plan without cost-sharing reductions by applying the standard plan's actuarial value, as calculated pursuant to 45 CFR 156.135, to the allowed costs for EHB for the enrollees for the benefit year. If HHS were to disagree with the issuer's assessment, the QHP issuer would calculate such amounts using the effective cost-sharing parameters under the approach described in paragraphs

(4)(i) through (4)(iii) of the interim final rule (or paragraph (4)(iv), if applicable).

We sought comments on whether we should adopt such an approach, and on the specifics outlined above. In particular, we sought comments on the types of plans, if any, for which it would be difficult to fairly calculate the amount that enrollees would have paid under the standard plan without cost-sharing reductions using the simplified methodology, and their prevalence. We sought comments on the standard that should apply for determining whether the plan will be exempted from using the simplified methodology, and how HHS should make that determination. Finally, we requested comments on what estimation methodology should be used if the plan is determined to be exempt, and if it is not.

We did not receive any specific comments on this proposal, though as noted above, some commenters suggested that for certain plan designs, the simplified methodology may result in the overestimation or underestimation of enrollee liability, and as a result, the QHP issuer's actuary should be allowed greater flexibility in the calculation of an average deductible and an average claims ceiling, as long as the calculations are justified in the actuarial memorandum.

Because we did not receive any comments supporting this proposal, or any examples of plans for which the simplified methodology would not adequately approximate cost sharing, we are not finalizing this approach.

Comment: We received a comment that relates generally to the reconciliation of cost-sharing reduction payments. The commenter asked whether a QHP issuer that is using the standard methodology must re-adjudicate the claims sequentially as if the enrollees were in the standard plan.

Response: QHP issuers using the standard methodology should adjudicate the claims in a manner that will yield an accurate calculation of the amount of cost sharing that enrollees would have paid under the standard plan. If sequential adjudication of claims is not necessary to do so, the issuer is not required to engage in sequential adjudication.

Summary of Regulatory Changes

We are modifying § 156.430(c)(3) to specify that QHP issuers may only choose the simplified methodology for calculating the amounts that would have been paid under the standard plan without cost-sharing reductions for benefit years 2014 through 2016. We also are modifying § 156.430(c)(4) to address unique benefit structures and

reduce potential biases in the formulas. We are clarifying how QHP issuers should calculate the effective cost-sharing parameters for self-only coverage, other than self-only coverage, medical services, and pharmaceutical services.

d. Failure To Reduce an Enrollee's Premium To Account for Advance Payments of the Premium Tax Credit (§ 156.460(c))

We also proposed to add new paragraph (c) to § 156.460, providing that if a QHP issuer discovers that it did not reduce the portion of the premium charged to or for the enrollee for the applicable month(s) by the amount of the advance payment of the premium tax credit as required in § 156.460(a)(1), the QHP issuer would be required to refund to the enrollee any excess premium paid by or for the enrollee and notify the enrollee of the improper application no later than 30 calendar days after the QHP issuer discovers the error. We noted that a QHP issuer may provide the refund to the enrollee by reducing the enrollee's portion of the premium in the following month, as long as the reduction is provided no later than 30 calendar days after the QHP issuer discovers the improper reduction. If the QHP issuer elects to provide the refund by reducing the enrollee's portion of the premium for the following month, and the refund exceeds the enrollee's portion of the premium for the following month, then the QHP issuer would need to refund to the enrollee the excess no later than 30 calendar days after the QHP issuer discovers the improper reduction. We also noted that we were also considering that for each quarter beginning in 2015, a QHP issuer would be required to provide a report to HHS and the Exchange, in a manner and timeframe specified by HHS, detailing the occurrence of instances of improper applications of the requirements of § 156.460.

Comment: Several commenters supported a 30-day timeframe for issuers to refund excess advance payment of the premium tax credit to enrollees, while other commenters stated that a 60-day timeframe is more realistic. Another recommended a 90-day timeframe given the challenges of enrollment reconciliation and resolution of discrepancies. One commenter noted that associated refunds are commonly performed through batch processing which could take more than 30 calendar days to correct, and suggested that HHS allow a longer timeframe to account for such administrative processes.

Response: In consideration of the timeframes for enrollment reconciliation and resolution processes we are extending the timeframe for QHP issuers to provide refunds in such cases to within 45 days of discovery of the error. This timeframe aligns with the timeframe established under § 156.410 with respect to misapplication of cost-sharing reductions.

Comment: Several commenters suggested that issuers be allowed to apply such refundable amounts to the premium due in subsequent months through the end of the benefit year, and that a refund be provided only at the request of the enrollee. One commenter noted that issuing a partial refund and partial credit in a given month may be confusing to consumers, and does not align with standard practice today. Another commenter recommended that consumers should have the option of receiving a refund directly.

Response: In response to comments, we are modifying the proposed policy in this final rule. In particular, if a QHP issuer discovers that it did not reduce an enrollee's premium by the amount of the advance payment of the premium tax credit, then, upon request by or for the enrollee, the QHP issuer must refund to the enrollee any excess premium paid by or for the enrollee within 45 calendar days of discovery of the improper reduction. However, if a direct refund is not requested, the QHP issuer may apply the total remaining excess premium paid by or for the enrollee to the enrollee's portion of the premium each month for the remainder of the period of enrollment or benefit year, until the excess is fully applied. If any excess premium paid by or for the enrollee remains at the end of the period of enrollment or benefit year, the QHP issuer would be required to refund the excess within 45 calendar days of discovery of the error.

Additionally, we clarify that this provision would not prevent a QHP issuer from recouping excess funds from the enrollee, if the QHP reduced the enrollee's portion of the premium by more than the advance payment of the premium tax credit.

Comment: Two commenters supported a standard requiring quarterly error reports, although one suggested that such reports be delayed until 2016. One commenter recommended a semi-annual report. Another commenter stated that such reports duplicate information in the monthly enrollment reconciliation reports.

Response: Taking into consideration the comments received and to align with the policy finalized in § 156.410, we are not establishing a quarterly

reporting standard. We require issuers to report if they did not reduce the portion of the premium charged to or for the enrollee for the applicable month(s) by the amount of the advance payment of the premium tax credit as part of the annual reporting requirements set forth in § 156.480(b) of this final rule.

Summary of Regulatory Changes

We are finalizing these provisions as proposed with the following modifications. We are increasing the time period for issuing refunds from 30 to 45 days. We are also permitting the QHP issuer to apply the total excess premium paid by or for the enrollee to the enrollee's portion of the premium each month for the remainder of the period of enrollment or benefit year, except that the QHP issuer must refund the excess premium within 45 days of a request for the refund by or for the enrollee or within 45 days following the end of the period of enrollment or benefit year.

e. Oversight of the Administration of Cost-Sharing Reductions and Advance Payments of the Premium Tax Credit Programs (§ 156.480)

In § 156.480, we proposed general provisions related to the oversight of QHP issuers in relation to cost-sharing reductions and advance payments of the premium tax credit. We proposed to apply certain standards proposed in Part 156, subpart H for QHP issuers participating in FFEs to QHP issuers participating in the individual market on a State Exchange. In paragraph (a), we proposed to extend the standards set forth in proposed § 156.705 concerning maintenance of records to a QHP issuer in the individual market on a State Exchange in relation to cost-sharing reductions and advance payments of the premium tax credit. We also proposed that QHP issuers ensure that any delegated and downstream entities adhere to these requirements. We noted that a QHP issuer and its delegated and downstream entities may satisfy this standard by maintaining the relevant records for a period of 10 years and ensuring that they are accessible if needed in the event of an investigation or audit.

We also proposed that QHP issuers participating in State Exchanges and FFEs be subject to reporting and oversight requirements. In particular, in paragraph (b), we proposed that an issuer that offers a QHP in the individual market through a State Exchange or an FFE report to HHS annually, in a timeframe and manner required by HHS, summary statistics with respect to administration of cost-

sharing reductions and advance payments of the premium tax credit. Additionally, in paragraph (c) we proposed that HHS or its designee may audit an issuer that offers a QHP in the individual market through a State Exchange or an FFE to assess compliance with the requirements of this subpart and ensure appropriate use of Federal funds.

Comment: In response to proposed § 156.480(b), several commenters stated that the annual reports will be critical to protecting consumer rights, while others argued that this information will already be in HHS's possession. Another commenter recommended that HHS rely on market conduct examinations to conduct oversight. One commenter asked for more information on the rationale for and content of these reports.

Response: As discussed in the proposed rule, the annual reports will permit HHS to obtain summary information regarding cost-sharing reductions and advance payments of the premium tax credit across a broad range of issuers and identify any systemic issues and errors, without requiring annual audits. These reports will contain information not available to HHS through other channels, such as data on misapplications of cost-sharing reductions and advance payments of the premium tax credit. We believe that a consolidated report from all applicable issuers with respect to these programs will assist HHS in effectively targeting oversight activities and identifying problems that affect multiple issuers.

Comment: One commenter asked HHS to clarify the meaning of "delegated entities" and "downstream entities" that are subject to the requirement, and noted that the requirement should only apply to entities responsible for keeping records associated with advance payments of the premium tax credit or cost-sharing reductions.

Response: The terms "delegated entity" and "downstream entity" are defined at § 156.20. Furthermore, as noted in § 156.480(a), the maintenance of records standard applies to relevant delegated entities and downstream entities only in connection with cost-sharing reductions and advance payments of the premium tax credit.

Comment: We received a comment asking for further guidance on how Navigators, consumers, and other entities can report instances of non-compliance to HHS.

Response: We note that consumers, Navigators, and other entities can report issuer non-compliance to HHS through communication channels offered to consumers, such as the Health

Insurance Marketplace Call Center, where such reports will be entered into the casework tracking system and addressed by CMS.

Comment: One commenter asked HHS to clarify that any self-reported error rates will not be used as a basis for civil money penalties or decertification, since both penalties may be imposed for non-compliance with cost-sharing reduction and advance payment of the premium tax credit requirements. Another commenter asked HHS to provide guidance on how it will collect and respond to reports of non-compliance by QHP issuers and others.

Response: HHS will collect information from QHP issuers on the administration of cost-sharing reductions and advance payments of the premium tax credit, including error rates, through the annual reports described in § 156.480(b). We anticipate that this information will be used to inform an oversight and audit strategy with respect to these programs, and will be provided to the State Exchanges and utilized by the FFE as applicable for oversight and enforcement activities such as decertification and CMPs. We note that the 2014 policy of nonenforcement of CMPs in instances of good faith established in § 156.800 would apply in 2014 with respect to such errors.

Comment: One commenter suggested limiting the record retention requirement to 6 years, while another supported the proposed timeframe.

Response: As previously noted in this final rule, we are finalizing the maintenance of records provisions retention standard as proposed, in alignment with the statute of limitations for the False Claims Act and existing Exchange regulations.

Comment: One commenter requested that HHS provide further information on the timeframe and procedure of proposed audits, suggested that audits should be limited to three years after the completion of a benefit year, and recommended that HHS specify a mechanism by which issuers can challenge the audit findings.

Response: We intend to provide detailed guidance in the future and will seek comment on our audit process prior to finalization in order to ensure a transparent program and consistent audits. We are considering conducting audits in a manner that is coordinated across all programs and FFE compliance reviews to limit the number of potential audits that an organization would experience.

Summary of Regulatory Changes

We are finalizing these provisions and modifying paragraph (b) to specify that the annual reports must contain summary statistics with respect to the application of cost-sharing reductions and advance payments of the premium tax credit, including any failure to adhere to the standards set forth under § 156.410(a) through (d), § 156.425(a) through (b), and § 156.460(a) through (c) of this Part.

5. Subpart H—Oversight & Financial Integrity Requirements for Issuers of Qualified Health Plans in Federally-Facilitated Exchanges

a. Maintenance of Records for Federally-Facilitated Exchanges (§ 156.705)

We proposed in § 156.705(a) that issuers offering QHPs in an FFE maintain all documents and records (whether paper, electronic, or other media) and other evidence of accounting procedures and practices, which are critical for HHS to conduct activities necessary to safeguard the financial and programmatic integrity of the FFEs. We proposed that such activities include: (1) Periodic auditing of the QHP issuer's financial records related to the QHP issuer's participation in an FFE, and to evaluate the ability of the QHP issuer to bear the risk of potential financial losses; and (2) compliance reviews and other monitoring of a QHP issuer's compliance with all Exchange standards applicable to issuers offering QHPs in the FFE listed in part 156. We proposed limiting the scope of this requirement to Exchange-specific records as applicable to the FFEs. In § 156.705(b), we proposed that the records described in proposed paragraph (a) of this section include the sources listed in proposed § 155.1210(b)(2), (b)(3), and (b)(5) in order to align the record maintenance standards of the FFEs and State Exchanges to the extent possible. In § 156.705(c), we proposed that issuers offering QHPs in an FFE must maintain the records described in this section, as well as records required by § 155.710 (to determine SHOP eligibility), for 10 years. Proposed § 156.705(d) explained that the records referenced in paragraph (a) must be made available to HHS, the OIG, the Comptroller General, or their designees, upon request. We stated that the proposed standards pertain only to Exchange-specific areas of concern (for example, matters pertaining to advance payments of premium tax credits or cost-sharing reductions) within the FFEs, as HHS would expect the State DOI to oversee the maintenance of records pertaining to other aspects of

QHP issuer operations as required under State law.

Comment: Several commenters requested that HHS require maintenance and review of records related to particular standards in part 156, including QHP provider network adequacy, and the availability of essential community providers. Commenters also requested that HHS review documentation related to wellness programs, rating rules, essential health benefit requirements, and other applicable market reforms included in the Affordable Care Act, particularly in direct enforcement States.

Response: Under § 156.715, which we are finalizing in this final rule, HHS will be conducting compliance reviews to ensure that issuers offering QHPs in the FFE comply with Exchange standards as applicable to them. These include the standards related to network adequacy under § 156.230 and the standards related to essential community providers under § 156.235. Section 156.705 only applies to maintenance of records pertaining to FFEs, as we expect that QHP issuers will also have to comply with other aspects of issuer operations as required under state law.

Comment: Several commenters recommended the 10-year record maintenance standards be reduced to 6 or 7 years.

Response: We are finalizing the maintenance of records provisions as proposed, in alignment with the statute of limitations for the False Claims Act and existing related regulations. A civil action may be brought under the False Claims Act “no more than 10 years after the date on which the violation is committed.” Additionally, similar 10-year record retention standards were previously finalized in the Exchange Establishment Rule and the Premium Stabilization Rule. We believe that maintaining consistency in our record retention standards will help ensure that entities maintain records across programs in a consistent manner, allowing HHS and States to coordinate oversight efforts across those program areas and reduce the burden on stakeholders. QHP issuers have the choice to maintain records in either paper or electronic format. We note that the 10-year obligation to retain records begins when the record is created.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.705 without modification.

b. Compliance Reviews of QHP Issuers in Federally-Facilitated Exchanges (§ 156.715)

In § 156.715 we proposed that QHP issuers will be subject to compliance review by HHS to ensure ongoing compliance with Exchange standards applicable to issuers offering QHPs in FFEs. We proposed the scope of the compliance reviews and the window of time that such compliance reviews could be conducted.

Comment: We received comments supporting HHS’s authority to conduct compliance reviews of QHP issuers in the FFEs and no comments opposing this provision.

Response: We are finalizing our policy as proposed.

Summary of Regulatory Changes

We are finalizing this provision with the correction of a typographical error in paragraph (c).

6. Subpart J—Administrative Review of QHP Issuer Sanctions in a Federally-Facilitated Exchange

a. Administrative Review in a Federally-Facilitated Exchange (§§ 156.901 Through 156.963)

In Subpart J, we proposed the administrative hearing process for issuers of QHPs in an FFE against which an enforcement action has been taken. The process is intended to provide the issuer an opportunity to submit evidence to be considered by the administrative law judge (ALJ) in determining whether a basis exists to assess a CMP against or decertify a QHP offered by the respondent, and whether the amount of the assessed CMP is reasonable, if applicable. Our proposed process is modeled after the appeals process for individuals and entities against which a CMP has been imposed in the individual and group health coverage markets. We did not receive any comments on our proposed regulations in this Subpart J.

In § 156.805(d), we proposed that, if HHS proposes to assess a CMP under subpart I, HHS will send written notice of intent to issue a CMP to the QHP issuer concerned. Similarly, in § 156.810(c) and (d), we proposed that, for standard and expedited decertifications, HHS will notify the QHP issuer, enrollees in the QHP, and the State DOI in the State in which the QHP is being decertified of HHS’s intent to decertify a QHP offered by the issuer. We note that the notice under 45 CFR 156.805(d) and 156.810(c) and (d) is different from, and in addition to, the notice required under 45 CFR 155.1080. In § 156.805 and § 156.810, we set forth

the process by which QHP issuers will be notified formally of HHS’s intent to issue a CMP or decertify one or more of their QHPs, the grounds for the enforcement action, and other specified information, including information about the process for requesting an appeal. The 30-day clock for requesting an appeal under 45 CFR 156.905(a) starts on the date of issuance of HHS’s notice of intent to issue a CMP under § 156.805 or notice of decertification of a QHP under § 156.810(c) or (d). By contrast, 45 CFR 155.1080 requires that notice be sent to the QHP issuer, enrollees in the QHP, and the State DOI when the decertification is final and no longer appealable. Furthermore, 45 CFR 155.1080 does not apply in the case of a CMP. We are finalizing 45 CFR part 156, subpart J as proposed, except for a minor change to § 156.963, described below.

Summary of Regulatory Changes

We are finalizing these provisions of 45 CFR part 156, subpart J as proposed, with two exceptions. We are not finalizing § 156.949, and we are making a minor change to correct the reference to the “final order” in § 156.963. We are replacing “the final order described in § 156.945” with “the final order imposing a civil money penalty.”

7. Subpart L—Quality Standards

a. Establishment of Standards for HHS-Approved Enrollee Satisfaction Survey Vendors for Use by QHP Issuers in Exchanges (§ 156.1105)

In § 156.1105, we proposed processes by which HHS would approve and oversee enrollee satisfaction survey vendors that will administer enrollee satisfaction surveys on behalf of QHP issuers. We proposed that enrollee satisfaction survey vendors be approved for one year terms and would be required to submit an annual application demonstrating that they meet all of the application and approval standards. We also proposed listing HHS-approved enrollee satisfaction survey vendors on an HHS Web site. We received several comments and our responses to § 156.1105 are set forth below.

Comment: Commenters generally supported the proposal to establish an application and review process for enrollee satisfaction survey vendors. Commenters supported the proposed requirements that will ensure that enrollee satisfaction survey vendors abide by standards for integrity, including privacy and security standards. Commenters also supported establishing standards for QHP issuers

to use only HHS-approved vendors to ensure consistency and integrity in enrollee satisfaction survey administration.

Response: We are adopting the regulation as proposed to have HHS approve and oversee enrollee satisfaction survey vendors that meet certain standards. As stated in the proposed rule, we intend to promulgate future rulemaking requiring QHP issuers to contract with HHS-approved survey vendors to administer enrollee satisfaction surveys. By finalizing as proposed, we are ensuring that enrollee satisfaction survey vendors will be approved by mid-2014. We believe that this will allow QHP issuers adequate time to contract with these vendors by late 2014, prior to the implementation of any relevant quality reporting standards.

Comment: Commenters suggested that HHS utilize one enrollee satisfaction survey vendor on behalf of all QHPs. Commenters also suggested that issuers have a role in the survey vendor application process.

Response: We believe that allowing multiple enrollee satisfaction survey vendors the opportunity to apply for approval will encourage a competitive market of qualified enrollee satisfaction survey vendors. Therefore, HHS is finalizing the proposal to establish a standardized process to review and approve multiple enrollee satisfaction survey vendors. We intend for QHP issuers, along with the public, to have an opportunity to provide comments on other draft documents related to the enrollee satisfaction survey vendor application and approval process. Further, while QHP issuers will not have a direct role in HHS review and approval of enrollee satisfaction survey vendors, QHP issuers are expected to have a choice of enrollee satisfaction survey vendors with which to contract, including those with which the issuers may already have a business relationship, for example, to administer other surveys like the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) survey on behalf of the issuer. Additionally, QHP issuers will have the opportunity to provide to HHS comment and feedback related to the work of approved enrollee satisfaction survey vendors.

Comment: Commenters requested affirmation that enrollee satisfaction survey vendors would be required to adhere to non-discrimination standards.

Response: Enrollee satisfaction survey vendors, as “delegated entities” of QHP issuers defined in 45 CFR 156.20 and set forth in 45 CFR 156.340, would be required to meet any non-discrimination

standards required of QHP issuers, as specified in 45 CFR 156.200(e).

Comment: Commenters requested that enrollee satisfaction survey vendors translate the enrollee satisfaction survey into different languages for populations representing a certain enrollment threshold, for example any language for which a QHP issuer’s enrollment meets a threshold of 5 percent or 1000 primary speakers.

Response: Enrollee satisfaction survey vendors will not be responsible for translating the enrollee satisfaction survey. HHS is developing the enrollee satisfaction survey system as required by section 1311(c)(4) of the Affordable Care Act and will provide translated versions of the survey to ensure consistency across all surveys. HHS will provide enrollee satisfaction survey vendors with versions in English, Spanish, and Chinese, which align with current translation standards for the Medicare Advantage CAHPS® Health Plan surveys.

Comment: Commenters supported the recommendation that HHS utilize the CAHPS® Health Plan survey as a model for the enrollee satisfaction survey to assess patient experience with QHP issuers. Another commenter suggested using the existing CAHPS® Health Plan survey without modification.

Response: As stated in the proposed rule, we intend to establish in future rulemaking that the enrollee satisfaction survey will be modeled on the CAHPS® 5.0 Health Plan survey, which assesses patients’ satisfaction and experience with their health care, personal doctors, and health plans. In a **Federal Register** Notice published June 28, 2013,¹⁹ we sought public comment on the Enrollee Satisfaction Survey Data Collection, including the draft surveys. Commenters may wish to review the draft enrollee satisfaction surveys.

Comment: Commenters requested that CMS articulate detailed implementation standards for the enrollee satisfaction survey. Commenters also requested that results of the survey be shared with State Exchanges.

Response: As indicated in the proposed rule, we are planning to issue future regulations that will include detailed implementation standards for the enrollee satisfaction surveys as they relate to QHP issuers and Exchanges. Further, 45 CFR 155.205(a)(iv) requires Exchanges to display the enrollee satisfaction results on their Web sites.

Comment: Several commenters made remarks about the content of the

enrollee satisfaction survey, including requests that the survey assess: Provider satisfaction with QHP issuers and the experience of families and pediatricians that interact with the Exchange for their children’s coverage, and satisfaction with Exchanges overall, including the eligibility determination processes, plan selection, and in-person and telephonic assistance. Other commenters requested that HHS ensure experience of the Exchange is not attributed to QHP issuer performance. Finally, commenters cited their previously submitted comments in response to an HHS solicitation for comments on enrollee satisfaction measures and asked that their comments be considered.²⁰

Response: Comments with regard to the content of the surveys are outside the scope of this final rule, which includes standards for the application and approval process for enrollee satisfaction survey vendors. However, as previously mentioned, commenters can review the draft surveys as part of the Enrollee Satisfaction Survey Data Collection, including the QHP Survey and the Marketplace Survey. Comments submitted in response to the June 21, 2013 call for measures will be considered in the development of the enrollee satisfaction survey.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.1105 without modification.

8. Subpart M—Qualified Health Plan Issuer Responsibilities

a. Confirmation of HHS Payment and Collections Reports (§ 156.1210)

We noted in the proposed rule that we anticipate sending each applicable issuer a monthly payment and collections report. This report will show, with respect to certain provisions under Title I of the Affordable Care Act, payments the Federal government owes to the issuer, as well as those the issuer owes the Federal government. For the 2014 benefit year, we anticipate issuing a detailed monthly report, also known as the HIX 820, that will describe the advance payments of the premium tax credit and advance payments of cost-sharing reductions that the Federal government is paying to the issuer for each policy listed on the payment report, any amounts owed by the issuer for FFE user fees, as well as any adjustments from previous payments

¹⁹ Agency Information Collection Activities: Proposed Collection; Comment Request, 78 FR 38986 (June 28, 2013).

²⁰ Request for Domains, Instruments, and Measures for Development of a Standardized Instrument for Use in Public Reporting of Enrollee Satisfaction With Their Qualified Health Plan and Exchange 77 FR 37409 (June 21, 2012).

under those programs. The issuer will need to review this detailed payment and collections report against the payments it expects for each policy based on the eligibility and enrollment information transmitted by the Exchange, and any amounts it expects the Federal government to collect for FFE user fees.²¹ In § 156.1210 we proposed that, within 15 calendar days of the date of a payment and collections report, the issuer would either confirm to HHS that the payment and collections report accurately lists payments owed by and to the issuer for the timeframe specified in the payment and collections report, or would describe to HHS any inaccuracy it identifies in these amounts (including incorrect payment amounts, or extra or missing policies in the report). These notifications would be provided in a format specified by HHS. We stated that HHS will work with issuers to resolve any discrepancies between the amounts listed in the HIX 820 payment and collections report and the amounts the issuer believes it should receive for the time period specified in the report. This proposed provision's verification timeframe helps align enrollment and eligibility data transmitted by the Exchange, payments provided by and collected by the Federal government, and the issuer's own records of payments due. This provision will also help ensure that the correct amounts of advance payments of the premium tax credit and cost-sharing reductions are paid to issuers on behalf of eligible individuals in a timely manner. The ability of HHS to identify and correct these errors promptly protects enrollees from unanticipated tax liability that could result if the advance payments of the premium tax credit they receive are greater than the amounts of premium tax credit authorized by the Exchange and accepted by the enrollee.

Comment: We received several comments seeking further information about the HIX 820 payment and collections report.

Response: In the fall of 2013, HHS intends to publish a Companion Guide to the HIX 820 payment and collections report. HHS offered related issuer training in September.

Comment: Some commenters suggested that issuers would need at least 30 days to analyze and respond to the HIX 820 payment and collections report. Another commenter suggested

that there should be at least a 60-day lag between the dates covered by the payment and collections report and the date it is sent to issuers.

Response: We are aware that in some cases, particularly in this first year of operations, issuers may find it difficult to perform a full analysis of the payment and collections report and provide a response. However, it is largely due to the challenges of the first year of operations that we proposed a 15-day verification period—this short time lag will help HHS adjust any discrepancies as soon as possible. As we discuss below, if an issuer is unable to meet the 15-day timeline, it will have later opportunities to note discrepancies.

Comment: Several commenters expressed concern about the potential consequences of failing to report a discrepancy. Other commenters suggested that there should be a retroactive payment correction process, or an appeals process, to update eligibility and enrollment determinations based upon information received late.

Response: We recognize that there are legitimate circumstances in which an issuer might not discover an inaccuracy within the 15-day timeline set forth in § 156.1210, and we do not wish to penalize an issuer in such circumstances. Therefore, we are adding a new paragraph (b) to § 156.1210 stating that HHS will work with issuers to resolve discrepancies reported by an issuer after the 15-day deadline, as long as the late discovery of the discrepancy was not due to misconduct on the part of the issuer. We are also considering establishing in future rulemaking a final deadline after which discrepancies cannot be reported, as well as an administrative appeals process that would be available to issuers that are not satisfied with the result of that process.

Summary of Regulatory Changes

We are finalizing § 156.1210, with the following modifications. We are redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2) and are adding a new paragraph (b) to state that if an issuer reports a discrepancy in a payment and collections report later than 15 calendar days after the date of the report, HHS will work with the issuer to resolve the discrepancy as long as the late reporting by the issuer was not due to misconduct on the part of the issuer. And because HHS's payments will technically be made by the U.S. Treasury, we are modifying § 155.1210(a)(1) to clarify that the payments owed by and to the issuer listed on the payment and collections

report are payments to and from the Federal government.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The following sections of this document contain estimates of burden imposed by the associated information collection requirements (ICRs); however, not all of these estimates are subject to the ICRs under the PRA for the reasons noted. Estimated salaries for the positions cited were mainly taken from the Bureau of Labor Statistics (BLS) Web site (http://www.bls.gov/oco/oooh_index.htm). The estimated salaries for the health policy analyst and the senior manager were taken from the Office of Personnel Management Web site. Fringe Benefits estimates were taken from the BLS March 2013 Employer Costs for Employee Compensation Report.²²

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding Program Integrity Provisions Related to State Operation of the Reinsurance Program (§ 153.260)

In § 153.260, we direct a State-operated reinsurance program to: (1) Keep an accurate accounting of reinsurance contributions, payments, and administrative expenses; (2) submit to HHS and make public a summary report on program operations; and (3) engage an independent qualified auditing entity to perform a financial

²¹ We note that in order to provide issuers with more lead time to review the payment and collections report, HHS also anticipates providing an initial statement listing anticipated payments and charges. Issuers will not be under any obligation to respond to this initial statement.

²² BLS March 2013 Employer Costs for Employee Compensation Report (March 12, 2013). Available at: <http://www.bls.gov/news.release/eecc.toc.htm>.

and programmatic audit for each benefit year, provide the audit results to HHS, and make public a summary of the audit results. Fewer than 10 States have informed HHS that they will operate reinsurance for the 2014 benefit year. While these reinsurance records requirements are subject to the PRA, we believe the associated burden is exempt under 5 CFR 1320.3(c)(4) and 44 U.S.C. 3502(3)(A)(i), since fewer than 10 entities would be affected. Therefore, we are not seeking approval from OMB for these information collection requirements.

B. ICRs Regarding Program Integrity Provisions Related to State Operation of the Risk Adjustment Program (§ 153.310(c)(4) and § 153.310(d)(3)–(4), and § 153.365)

In § 153.310(c)(4), § 153.310(d)(3)–(4), and § 153.365, we require a State operating risk adjustment to: (1) Retain records for a 10-year period; (2) submit an interim report in its first year of operation; (3) submit to HHS and make public a summary report on program operations for each benefit year; and (4) keep an accurate accounting for each benefit year of all receipts and expenditures related to risk adjustment payments, charges, and administrative expenses. Fewer than 10 States have informed HHS that they will operate risk adjustment for the 2014 benefit year. Since the burden associated with collections from fewer than 10 entities is exempt from the PRA under 5 CFR 1320.3(c)(4) and 44 U.S.C. 3502(3)(A)(i), we are not seeking approval from OMB for the risk adjustment information collection requirements. However, if more than nine States elect to operate risk adjustment in the future, we will seek approval from OMB for these information collections.

C. ICRs Regarding Maintenance of Records for Contributing Entities and Issuers of Reinsurance-Eligible Plans (§ 153.405(h) and § 153.410(c))

In § 153.405(h) and § 153.410(c), we included record retention standards for contributing entities and issuers of reinsurance-eligible plans. In § 153.405(h), we require contributing entities to maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the enrollment count submitted pursuant to § 153.405(b) for a period of at least 10 years, and to make those documents and records available upon request to HHS, the OIG, the Comptroller General, or their designees, for purposes of verification of reinsurance contribution amounts. This requirement may be satisfied if the

contributing entity archives the documents and records and ensures that they are accessible if needed in the event of an investigation or audit.

We estimate that 26,200 contributing entities will be subject to this requirement, based on the Department of Labor's (DOL) estimated count of self-insured plans and the number of fully insured issuers that we estimate will make reinsurance contributions.²³ We believe that most of these contributing entities will already have the systems in place for record maintenance, and that the additional burden associated with this requirement is the time, effort, and additional labor cost required to maintain the records. On average, we estimate that it will take each contributing entity approximately 5 hours annually to maintain records. We estimate that it will take an insurance operations analyst 5 hours (at \$38.49 per hour) to meet the requirements in § 153.405(h). On average, the cost for each contributing entity would be approximately \$192.45 annually. Therefore, for 26,200 contributing entities, we estimate an aggregate burden of \$5,042,190.00 and 131,000 hours as a result of this requirement.

In § 153.410(c), we require issuers of reinsurance-eligible plans to maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the requests for reinsurance payments made pursuant to § 153.410(a) for a period of at least 10 years, and must make that evidence available upon request to HHS, the OIG, the Comptroller General, or their designees, (or, in the case of a State operating reinsurance, the State or its designees), for purposes of verification of reinsurance payment requests. We estimate that 1,900 issuers of reinsurance-eligible plans will be subject to this requirement, based on HHS's most recent estimate of the number of fully insured issuers that will submit requests for reinsurance payments. On average, we estimate that it will take each issuer of a reinsurance-eligible plan approximately 10 hours annually to maintain the records. We estimate that it will take an insurance operations analyst 10 hours (at \$38.49 per hour) to meet these requirements. On average, the cost estimate for each issuer is approximately \$384.90 annually. Therefore, for 1,900 issuers,

we estimate an aggregate burden of \$731,310.00 and 19,000 hours as a result of this requirement.

The burden estimates for these two recordkeeping requirements are broad estimates that include not only the maintenance of data, but all records and documents that may be necessary to substantiate the enrollment count and requests for reinsurance payments made pursuant to 45 CFR 153.405 and 153.410, respectively. Because the scope of these requirements is substantially narrower than the scope of the recordkeeping requirement applicable to a State operating reinsurance, these estimates are lower than those that were set forth for the State-operated reinsurance programs record maintenance requirement (45 CFR 153.240(c)) in the Premium Stabilization Rule published March 23, 2012 (77 FR 17220), and the associated information collection request approved under OMB Control Number 0938–1155. We note that we will account for the additional burden associated with submitting this information to HHS in a future information collection request that will go through the requisite notice and comment period and subsequent OMB review and approval process.

D. ICRs Related to Oversight and Financial Integrity Standards for State Exchanges (§ 155.1200 to § 155.1210)

In subpart M of part 155, we describe the information collection and third-party disclosure standards related to the oversight and financial integrity of State Exchanges.

Section 155.1200(a)(1) through (3) requires the State Exchange to follow GAAP and to monitor and report to HHS all Exchange-related activities. This includes keeping an accurate accounting of all Exchange receipts and expenditures. The burden associated with this reporting requirement is the time and effort needed to develop and submit reports of Exchange-related activities to HHS. The State Exchanges will electronically maintain the information as a result of normal business practices; therefore, the burden does not include the time and effort needed to maintain the Exchange-related activity information. State Exchanges most likely will already have accounting systems in place to store accounting information. The burden associated with this requirement includes a computer programmer taking 8 hours (at \$48.61 an hour) to modify the system to maintain and monitor the information required under § 155.1200(a)(1) through (3), an analyst taking 8 hours (at \$58.05 an hour) to pull the necessary data under

²³ We use an estimate of self-insured entities published by the DOL in the March 2013 "Report to Congress: Annual Report of Self-insured Group Health Plans," which reflects only those self-insured health plans (including 19,800 self-insured plans and 4,000 plans that mixed self-insurance and insurance) that are required to file a Form 5500 with the DOL.

§ 155.1200(a)(1) through (3) in the State Exchange accounting system, and a senior manager taking 2 hours (at \$77.00 an hour) to oversee the development and transmission of the reported data. We estimate that it will take 18 total hours at a cost of \$1,007.28 for each State Exchange. Therefore, for the 18 State Exchanges, we estimate an aggregate burden of \$18,131.04 and 324 hours as a result of this requirement.

Section 155.1200(b)(1) requires the State Exchange to submit a financial statement, in accordance with GAAP to HHS. The information under § 155.1200(b) must be submitted at least annually by April 1 to HHS and must also be publicly displayed. The burden associated with this reporting requirement is the time and effort needed to develop and submit the financial statement to HHS. The State Exchanges will electronically submit the information. Therefore, the burden is the time and effort needed to develop and publically display the financial statement. The State Exchanges will electronically maintain the information as a result of normal business practices, therefore the burden does not include the time and effort needed to develop and maintain the financial information. The burden associated with this requirement includes a computer programmer taking 40 hours (at \$48.61 an hour) to design the financial statement report, an analyst taking 8 hours (at \$58.05 an hour) pulling the necessary data and inputting it into the financial statement report, and a senior manager taking 2 hours (at \$77.00 an hour) overseeing the development and transmission of the reported data. We estimate a burden of 50 total hours for each State Exchange at a cost of \$2,562.80. Therefore, for the 18 State Exchanges, we estimate an aggregate burden of \$45,410.40 and 900 hours as a result of this requirement.

Section 155.1200(b)(2) requires the State Exchange to submit eligibility and enrollment reports to HHS. The State Exchanges will electronically maintain the information as a result of normal business practices, therefore the burden does not include the time and effort required to develop and maintain the source information. The burden associated with this reporting requirement includes the time and effort necessary for a computer programmer taking 40 hours (at \$48.61 an hour) to design the report template, an analyst taking 8 hours (at \$58.05 an hour) to compile the statistics for the report for submission to HHS, a privacy officer taking 8 hours (at \$64.98 an hour) and senior manager taking 2 hours (at \$77.00 an hour) overseeing the development

and submission of the reported data. The burden also includes the time and effort necessary to post the data on the State Exchange Web site. We estimate an initial year burden of 58 hours at a cost of \$3,082.64 to each State Exchange. Therefore, for the 18 State Exchanges, we estimate an aggregate burden of \$55,487.52 and 1,044 hours as a result of this requirement.

As discussed in § 155.1200(b)(3), the State Exchange will report performance monitoring data to HHS. The performance monitoring data includes information on financial sustainability, operational efficiency, and consumer satisfaction which will be reported on an annual basis. The State Exchanges will electronically maintain the information as a result of normal business practices developed under Establishment Grants from HHS for this purpose. Therefore the burden does not include the time and effort needed to develop and maintain the performance data. The burden associated with meeting the reporting requirement includes the time and effort necessary for a computer programmer taking 40 hours (at \$48.61 an hour) to design the report, for an analyst taking 12 hours (at \$58.05 an hour) to pull data into the report and prepare for submission to HHS and for a senior manager taking 2 hours (at \$77.00 an hour) to oversee the development and transmission of the reported data. Section 155.1200(b) requires the State Exchange to submit to HHS and to display publicly financial, eligibility and enrollment reports and performance data at least annually. For those measures reported annually, we estimate that in the initial year a burden of 54 hours at a cost of \$2,795.00 for each State Exchange. Therefore, for the 18 State Exchanges, we estimate an aggregate burden of \$50,031.00 and 972 hours as a result of this requirement. For subsequent years, when the Establishment Grant project period ends we estimate an additional burden of 208 hours necessary for the computer programmer (at \$48.61 an hour) to maintain the performance data. For the first year, the burden for maintaining the data was already accounted for in the PRA package for the Exchange Establishment Grants (OMB Control Number 0938–1119); therefore, we are only including subsequent years in the ICR. We estimate that the total burden from year 1 will decrease to \$25,016.00 assuming a decreased effort and an additional burden of \$18,199.00 for maintaining the data, yielding a total burden of \$44,012.00 for subsequent years.

Section 155.1200(b)(4) requires the State Exchange to make public a

summary of the results of the external financial audit. The burden associated with this requirement is the time and effort for a computer programmer taking 1 hour (at \$48.61 an hour) to design the summary and for an analyst to take 1 hour (at \$58.05 an hour) to pull data into the summary and prepare for public display. For this requirement we estimate in the initial year a burden of 2 hours for the State Exchanges at a cost of \$107.00 each and a total burden of \$1926.00. Therefore, for the 18 State Exchanges, we estimate an aggregate burden of \$1926.00 and 36 hours as a result of this requirement.

Section 155.1200(c)(1) through (3) directs the State Exchange to engage an independent audit/review organization to perform an external financial and programmatic audit of the State Exchange. The State Exchange must provide the results of the audit and identify any material weakness or significant deficiency and any intended corrective action. The State Exchange must also make public a summary of the audit results. The burden associated with meeting this third party disclosure requirement includes the burden for an analyst level employee taking 3 hours (at \$48.61 an hour) to pull data into a report, the time and effort necessary for a health policy analyst taking 2 hours (at \$58.05 an hour) to prepare the report of the audit results, and the time for senior management taking 1 hour (at \$77.00 an hour) to review and submit to HHS. We estimate a burden of 6 hours at a cost of \$338.93 for each State Exchange. Therefore, for the 18 State Exchanges, we estimate an aggregate burden of \$6,100.74 and 108 hours as a result of this requirement.

As stated in § 155.1210(a), the State Exchange and its contractors, subcontractors, and agents must maintain for 10 years, books, records, documents, and other evidence of accounting procedures and practices. Section 155.1210(b) specifies that the records include information concerning management and operation of the State Exchange's financial and other record keeping systems. The records must also include financial statements, including cash flow statements, and accounts receivable and matters pertaining to the costs of operation. Additionally, the records must contain any financial report filed with other Federal programs or State authorities. Finally, the records must contain data and records relating to the State Exchange's eligibility verifications and determinations, enrollment transactions, appeals, plan variation certifications, QHP contracting data, consumer outreach, and Navigator grant oversight information. State

Exchanges most likely already have systems in place to store records. The burden associated with this record keeping requirement includes the time and effort necessary for a network administrator taking 16 hours (at \$46.86 an hour) to modify the State systems to maintain the information required under § 155.1210(b), for a health policy analyst taking 8 hours (at \$58.05 an hour) to enter the data under § 155.1210(b) into the State Exchange record retention system, and for senior management taking 2 hours (at \$77.00 an hour) to oversee record collection and retention. We estimate that it will take 26 hours at a cost of \$1,368.16 for each State Exchange. Therefore, for the 18 State Exchanges, we estimate an aggregate burden of \$24,626.88 and 468 hours as a result of this requirement.

E. ICRs Related to Change of Ownership (§ 156.330)

The QHP issuer must notify HHS of the change in a manner to be specified by HHS and provide the legal name and tax identification number of the new owner of the QHP and the effective date of the change of ownership. The information must be submitted at least 30 days prior to the effective date of the change of ownership. We estimate fewer than 10 QHP issuers will report changes of ownership. While this reporting requirement is subject to the PRA, we believe the associated burden is exempt under 5 CFR 1320.3(c)(4) and 44 U.S.C. 3502(3)(A)(i), since fewer than 10 entities would be affected. Therefore, we are not seeking approval from OMB for these information collection requirements.

F. ICRs Related to Payment for Cost-Sharing Reductions (§ 156.430)

Several of the provisions established in the interim final rule and finalized in this final rule require the collection of information.

First, under paragraph (c)(3)(i) as established in the interim final rule, and finalized in this rule, a QHP issuer must notify HHS prior to the start of each benefit year whether or not it selects the simplified methodology for the benefit year. Pursuant to the Paperwork Reduction Act of 1995, we detailed this information collection in a notice requesting comment in the **Federal Register** (78 FR 38983), and estimated the total burden of this request to be \$3,600,000 for 2014 through 2016.

In § 156.430(c)(4) of the interim final rule, we established a simplified methodology for calculating the value of the amount that the enrollees would have paid under the standard plan without cost-sharing reductions. To

estimate the incremental effect of the simplified methodology, we compared the burden of the standard methodology to the simplified methodology for those issuers that we assumed would select the simplified methodology. As discussed in the Collection of Information section in the 2014 Payment Notice, we estimated that 1,200 issuers will participate in an Exchange nationally and will incur total costs of approximately \$138 million using the standard methodology. In contrast, in the interim final rule, we estimated that each issuer using the simplified methodology would incur labor costs of 40 hours of work by an actuary (at a wage rate of \$56.89) and 20 hours of work by an insurance manager (at a wage rate of \$67.44) to develop the effective cost-sharing parameters and actuarial memorandum, and calculate the amount of cost-sharing reductions provided, resulting in a cost of approximately \$3,624 per issuer.²⁴

Because we have modified the simplified methodology in this final rule, we are updating this estimate to require 42 hours of work by an actuary and 22 hours of work by an insurance manager, resulting in a cost of approximately \$3,873 per issuer. Although we cannot predict the precise number of issuers that will select either the standard or simplified methodology, we estimate that approximately half of QHP issuers (600 issuers) will implement the simplified methodology. Therefore, we estimate that the provisions of this rule will result in an incremental savings of approximately \$57,676,164 (\$60 million that would have been incurred by these issuers under the standard methodology, minus 600 multiplied by \$3,873) by reducing the overall administrative costs that issuers incur.

The information collections associated with these provisions are subject to the Paperwork Reduction Act; however, the information collection process and instruments are currently under development. We will seek OMB approval and solicit public comments upon their completion.

G. ICRs Related to Oversight of Cost-Sharing Reductions and Advance Payments of the Premium Tax Credit (§ 155.340, § 156.410, § 156.460 and § 156.480)

Section 156.460 requires a QHP issuer to notify the enrollee within 45 calendar days of the QHP issuer's discovery of

the error, when the QHP issuer improperly reduces the premium by the amount of the advance payment of the premium tax. A parallel provision is established under § 155.340 when the Exchange is facilitating the collection of premiums. Additionally, in § 156.410(c) and (d) a QHP issuer must notify the enrollee within 45 calendar days of the QHP issuer's discovery of the error of a misapplication of the cost-sharing reduction or the improper assignment to a plan variation (or standard plan without cost-sharing reductions) and subsequent reassignment. We believe that these notifications will be effectuated as part of standard billing practices and therefore will not create an additional burden on the Exchange or QHP issuers. Therefore, we do not estimate a burden for this notification.

In § 156.480(a), we extend the standards set forth in proposed § 156.705 concerning maintenance of records to a QHP issuer in the individual market on State Exchange with respect to cost-sharing reductions and advance payments of the premium tax credit. We believe that the burden of maintaining records related to cost-sharing reductions and advance payments of the premium tax credit for QHP issuers in an FFE is already accounted for in the burden for finalized § 156.705, described elsewhere in the Collection of Information section of this final rule. In § 156.480(b), we establish that, for each benefit year, an issuer that offers a QHP in the individual market through a State Exchange or an FFE report to HHS annually, in a timeframe and manner required by HHS, summary statistics with respect to cost-sharing reductions and advance payments of the premium tax credit. In the proposed rule we stated that we believed that QHP issuers would already have the information and data systems in place necessary to generate a summary report, and that there would only be a small additional burden as a result of this submission requirement. We estimated that it would take an insurance operations analyst 16 hours (at \$38.49 an hour) annually and one senior manager 2 hours (at \$77.00 an hour) to gather summary information and prepare a report for submission to HHS. Therefore, we estimated an additional burden of 21,600 hours and total costs of approximately \$923,808 for 1,200 QHP issuers (\$769.84, on average, for each QHP issuer) as a result of this requirement. However, in this final rule, we are adding a requirement that these summary reports include information on misapplication of cost-sharing reductions and advance payments of the

²⁴ HHS relied on the Bureau of Labor Statistics, U.S. Department of Labor, *National Compensation Survey Occupational Earnings in the United States, 2011*, for estimates of job descriptions and wages.

premium tax credit. We estimate that will take an insurance operations analyst 3 hours (at \$38.49 an hour) annually and one senior manager 1 hour (at \$77.00 an hour) to gather and prepare this additional information for the summary report, resulting in an additional burden of 4,800 hours and total costs of approximately \$230,964 for 1,200 QHP issuers (\$192.84, on average, for each issuer). This would increase the total burden for the summary reports to 26,400 hours and total costs to approximately \$1,154,772.

H. ICRs Related to Oversight and Financial Integrity Standards for Issuers of Qualified Health Plans in Federally-facilitated Exchanges (§ 156.705 to § 156.715)

The burden estimates for the collections of information in Part 156, Subpart H, of the regulation reflect the assumption that the FFEs will include 475 QHP issuers. We update the number of issuers in the FFEs from the estimated number in the proposed rule to reflect more current information on the number of issuers expected to participate in the FFEs. The labor categories and salary estimates used to calculate the cost burden of these collections on issuers are derived from the Bureau of Labor Statistics' (BLS) May 2012 Occupational Employment Statistics data for selected occupations. These burden estimates generally reflect burden for the first year.

Section 156.705 provides that issuers offering QHPs in an FFE must maintain all documents and records (whether paper, electronic or other media), and other evidence of accounting procedures and practices necessary for HHS to conduct activities necessary to safeguard the financial and programmatic integrity of the FFEs. Such activities include: (1) periodic auditing of the QHP issuer's financial records, including data related to the QHP issuer's ability to bear the risk of potential financial losses; and (2) compliance reviews and other monitoring of a QHP issuer's compliance with all Exchange standards applicable to issuers offering QHPs in the FFEs listed in part 156. These standards are limited to Exchange-specific records as applicable to the FFEs, and are not enforced by States as primary regulators. This standard mirrors the maintenance of records standard applicable to State Exchanges and set forth in § 155.1210. The burden includes utilizing existing technology and systems to process and maintain this information. This reflects 60 hours of work by an actuary (at \$56.89 an hour), 15 hours by a network

administrator (at \$46.86 an hour), 15 hours by a compliance officer (at \$53.75 an hour), and 10 hours for a senior manager to review (at \$77.00 an hour). We estimate that it will take 100 hours total at a cost of \$5,693.00 for a QHP issuer to maintain these records for an aggregate burden of 47,500 hours and \$2,704,175 for all 475 QHP issuers.

Section 156.705(d) provides that QHP issuers must make all records described in paragraph (a) of this section available to HHS, the OIG, the Comptroller General, or their designees, upon request. In estimating the annual hour and cost burden on QHP issuers of making these records available to such authorities upon request, we assumed that such requests would normally be made in connection with a formal audit or compliance review or a similar process. Our burden estimates for this section address the hour and cost burden of making records available to HHS, the OIG, the Comptroller General, or their designees, for audit. Our estimates reflect our assumptions that about 47 QHP issuers would be subject to a formal audit in a given year and that the burden on issuers of making the records available would include the time, effort, and associated cost of compiling the information, reviewing it for completeness, submitting it to the auditor(s), and participating in telephone or in-person interviews. We anticipate using a risk-based approach to selection of the majority of QHP issuers for compliance review so that burdens to the issuer community would generally be linked to the QHP issuers' risk. This reflects 75 hours of work by an actuary (at \$56.89 an hour), 10 hours by a compliance officer (at \$53.75 an hour), and 5 hours for a senior manager to review (at \$77.00 an hour). We estimate it will take 90 hours at a cost of \$5,189.25 for an issuer to make its records available for an audit for a total of 4,230 hours and \$243,894.75 across all QHP issuers subject to this requirement, which we estimate at an upper end as 100 issuers.

Section 156.715 establishes the general standard that QHP issuers are subject to compliance reviews. Our burden estimates for § 156.715 address the estimated annual hour and cost burden on QHP issuers of complying with the records disclosure requirements associated with compliance reviews conducted by an FFE.

Section 156.715 provides standards for compliance reviews in the FFEs, stating that QHP issuers offering QHPs in the FFEs may be subject to compliance reviews. This section also describes the categories of records and

information issuers must make available to an FFE in conducting such reviews.

Compliance reviews evaluate a QHP issuer's compliance with the Affordable Care Act and applicable regulations. Compliance reviews will target high-risk QHP issuers and not every issuer will be reviewed each year. The results of compliance reviews will also provide insight into trends across the compliance statuses of QHP issuers, enabling HHS to prioritize areas of oversight and technical assistance.

We assume that HHS will conduct desk reviews of 31 QHP issuers each year. For each QHP issuer desk review we estimate an average of 40 hours of administrative work to assemble the requested information by a health policy analyst (at \$58.05 an hour), 19.5 hours to review the information for completeness and an additional 30 minutes for a compliance officer to submit the information to HHS (at \$53.75 an hour). There will also be an additional 10 hours to spend on phone interviews conducted by the compliance reviewer and 2 hours to spend speaking through processes with the compliance reviewer (at \$53.75 an hour). We estimate it will take 72 hours at a cost of \$4,042.00 for an issuer to make information available to HHS for a desk review for a total of 2,232 hours and \$125,302.00 across all issuers that may be subject to this information collection requirement.

We assume that HHS will conduct onsite reviews of 16 QHP issuers each year. For each onsite review we estimate it will take an average of 40 hours for a health policy analyst (at \$58.05 an hour) to assemble the requested information, and 19.5 hours for a compliance officer (at \$53.75 an hour) to review the information for completeness and 30 minutes to submit the information to HHS in preparation for an onsite review. An onsite review requires an additional 2 hours to schedule the onsite activities with the compliance officer (at \$53.75 an hour), 4 hours for introductory meeting, 8 hours to tour reviewers onsite, 10 hours of interview time, 2 hours to walk through processes with the reviewer, and 4 hours for concluding meetings. This is a total of approximately 60 hours of preparation time and an additional 30 hours for onsite time for each QHP. We estimate it will take 90 hours at a cost of \$5,009.50 for an issuer to make information available to HHS for an onsite review. We estimate that the burden for all respondents that may be subject to this information collection will be 1,440 hours at a cost of \$80,152.00

In cases in which HHS could potentially require clarification around submitted information, HHS may need to contact QHP issuers within 30 days of information submission. This would be the case for approximately 20 issuers. We estimate it will take an issuer 2 hours (at \$53.75 an hour) to respond to questions for a total of 40 hours and \$1,075.00.

I. ICRs Regarding Administrative Review of QHP Issuer Sanctions in a Federally-facilitated Exchange (§ 156.901 to § 156.963)

Subpart J of Part 156 sets forth the administrative process for issuers subject to a CMP or decertification of a QHP offered by the issuer to appeal the enforcement action. In this process, an ALJ decides whether there is a basis for HHS to assess a CMP against the issuer and whether the amount of an assessed penalty is reasonable, or whether there is a basis for decertifying a QHP offered by the issuer, as applicable. Section 156.905 (intended to parallel 45 CFR 150.405) provides that a party has a right to a hearing before an ALJ if it files a valid request for a hearing within 30 days after the date of issuance of HHS's notice of proposed assessment or decertification. An issuer's request for a hearing must include the information listed in § 156.907. Under § 156.907, the request for a hearing must identify any factual or legal bases for the assessment or decertification with which the issuer disagrees. It must also describe with reasonable specificity the basis for the disagreement, including any affirmative facts or legal arguments on which the respondent is relying. The request must also identify the relevant notice of assessment or decertification by date and attach a copy of the notice.

The burden associated with this request includes the time and effort needed by the issuer to create the written request and submit it to the appropriate entity. The associated costs are labor costs for gathering the necessary background information described under § 156.907 and then preparing and submitting the written statement.

We base our burden estimate on the assumptions that one issuer will be subject to a CMP and that one issuer will have a QHP that it offers in an FFE decertified. We assume that the issuer in each case will choose to exercise its right to a hearing and will submit a valid request for hearing. The hours involved in preparing this request may vary; for the purpose of this burden estimate we estimate an average of 24 hours will be needed: 10 hours for the compliance officer to gather and

assemble the necessary background materials described under § 156.907, and prepare the written request (at \$53.75 an hour), 12 hours for an attorney (at \$90.14 an hour) to review the background materials and written request and provide recommendations to the senior manager, and 2 hours for the senior manager (at \$77.00 an hour) to discuss and act upon the attorney's recommendations and submit the written request. We estimate that it will take 24 hours at a cost of \$1,773.18 for an issuer to prepare and submit a request for a hearing for a total of 48 hours and \$3546.36 for each issuer subject to an enforcement action under this scenario. This estimate includes any statement of good cause under § 156.805(e)(3) or request for extension under § 156.905(b), if applicable. Because we only estimate that one issuer per year would appeal a CMP and one issuer will have its QHP offered in an FFE decertified, we do not include this burden estimate in our overall calculation of burden for this rule.

J. ICRs Related to Quality Standards (§ 156.1105)

In subpart L of part 156, we describe the information collection and disclosure requirements that pertain to the approval of enrollee satisfaction survey vendors. The burden estimate associated with these disclosure requirements includes the time and effort required for enrollee satisfaction survey vendors to develop, compile, and submit the application information and any documentation necessary to support oversight in the form and manner required by HHS. HHS is developing a model enrollee satisfaction survey vendor application that will include data elements necessary for HHS review and approval. In the near future, HHS will publish the model application and will solicit public comment. At that time, and per the requirements outlined in the PRA, we will estimate the burden on survey vendors for complying with this provision of the regulation. We solicit comment on the burden for the application and review process for these entities.

K. ICRs Related to Confirmation of Payment and Collection Reports (§ 156.1210)

In § 156.1210, we establish that, within 15 calendar days of the date of a HIX 820 payment and collections report from HHS, the issuer must, in a format specified by HHS, either confirm to HHS that the HIX 820 payment and collections report accurately lists, for the timeframe specified in the report, applicable payments owed by the

Federal government and the issuer; or describe to HHS any inaccuracy it identifies in the payment and collections report. We believe that issuers will generally be able to perform this confirmation automatically, and that there will only be a small additional burden as a result of this requirement. We estimate that it will take an insurance operations analyst 1 hour (at \$38.49 an hour) monthly to make the comparison and note any discrepancies to HHS (approximately \$461.88 for each issuer annually). Based on our most recent estimates, we believe that 2,400 issuers will be affected by this requirement, resulting in aggregate burden of approximately \$1,108,512.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this rule; or
2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, [CMS-9957-F2], Fax: (202) 395-6974; or Email: OIRA_submission@omb.eop.gov.

IV. Regulatory Impact Analysis

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the OMB.

A. Summary

This final rule sets financial integrity and oversight standards with respect to Exchanges; QHP issuers in an FFE; and States in regards to the operation of the risk adjustment and reinsurance programs. It also provides additional standards for special enrollment periods; survey vendors that may conduct enrollee satisfaction surveys on behalf of QHP issuers in Exchanges; and issuer participation in an FFE. In addition, this final rule amends and adopts as final interim provisions related to risk corridors and cost-sharing reduction reconciliation. Finally, it provides additional standards for guaranteed availability and renewability and makes certain amendments to the definitions and standards related to the market reform rules.

HHS has crafted this final rule to implement the protections intended by Congress in an economically efficient manner. We have examined the effects of this final rule as required by Executive Order 12866 (58 FR 51735, September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Social

Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)). In accordance with OMB Circular A–4, HHS has quantified the benefits and costs where possible, and has also provided a qualitative discussion of some of the benefits and costs that may stem from this final rule.

B. Executive Orders 13563 and 12866

Executive Order 12866 (58 FR 51735) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 (76 FR 3821, January 21, 2011) is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866.

Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a final rule—(1) Having an annual effect on the economy of \$100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients

thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year), and a “significant” regulatory action is subject to review by the OMB. OMB has designated this final rule as a “significant regulatory action.” Even though it is not certain whether it will have economic impacts of \$100 million or more in any one year, HHS has provided an assessment of the potential costs and benefits associated with this final regulation.

1. Need for Regulatory Action

Starting in 2014, qualified individuals and qualified employers will be able to use coverage provided by QHPs—private health insurance that has been certified as meeting certain standards—through Exchanges. The premium stabilization programs—the reinsurance, risk corridors and risk adjustment programs—will be in place to ensure premium stability for health insurance issuers as enrollment increases and issuers enroll high-risk individuals. This final rule establishes general oversight requirements for State-operated reinsurance and risk adjustment programs; establishes oversight of issuers inside and outside of the Exchange when HHS operates risk adjustment or reinsurance on behalf of a State; and establishes oversight and monitoring of State Exchanges, FFEs, SHOPs (both State Exchanges and FFEs) and issuers of QHPs, specifically with respect to financial integrity, and maintenance of records. This final rule

also restricts the use of funds for administrative expenses generated for State Exchanges and State-operated reinsurance programs; specifies procedures for oversight of advance payments of the premium tax credit and cost-sharing reductions; provides procedures to ensure the accuracy of data collection, calculations, and submissions; establishes requirements for enrollee satisfaction survey vendors; establishes standards related to risk corridors and cost-sharing reduction reconciliation; and provides additional standards for special enrollment periods.

2. Summary of Impacts

In accordance with OMB Circular A–4, Table IV.1 below depicts an accounting statement summarizing HHS’s assessment of the benefits and costs associated with this regulatory action. The period covered by the RIA is 2014–2017.

HHS anticipates that the provisions of this final rule will ensure smooth operation of Exchanges, integrity of the reinsurance, risk adjustment and risk corridors programs, safeguard the use of Federal funds, prevent fraud and abuse, and increase access to healthcare coverage. Affected entities such as States and QHP issuers will incur costs to maintain records, submit reports to HHS and Exchanges, and provide records for compliance reviews. In addition, QHP issuers that adopt the simplified methodology for calculating cost sharing reductions will incur lower administrative costs during a transitional period. In accordance with Executive Order 12866, HHS believes that the benefits of this regulatory action justify the costs.

TABLE IV.1—ACCOUNTING TABLE

Benefits:				
Qualitative:				
* Ensure integrity of the reinsurance and risk adjustment programs, smooth functioning of State Exchanges and FFEs				
* Prevent fraud and abuse				
* Ensure prompt refund of any excess premium or cost-sharing paid				
* Safeguard the use of Federal funds provided as cost-sharing reductions and advance payments of the premium tax credit and provide value for taxpayers’ dollars				
Costs:	Estimate	Year dollar	Discount rate percent	Period covered
Annualized Monetized (\$/year)	\$15.4 million ¹	2013	7	2014–2017
	\$15.3 million ¹	2013	3	2014–2017

Annual costs related to financial oversight, maintenance of records and reporting requirements for State Exchanges and State-operated reinsurance and risk-adjustment programs; record retention requirements for contributing entities and issuers of reinsurance-eligible plans; audit costs for State Exchanges and State-operated risk adjustment and reinsurance programs; costs for QHP issuers related to reporting requirements, record maintenance, audits, and training for customer service representatives.

Qualitative:

- * Costs incurred by enrollee satisfaction survey vendors related to annual application and meeting HHS standards

TABLE IV.1—ACCOUNTING TABLE—Continued

- * Reduce administrative costs for QHP issuers by allowing the use of a simplified methodology to calculate cost-sharing reductions during a transitional period
- * Reduce compliance costs for issuers by allowing a State operating a SHOP-only Exchange to establish and operate risk adjustment programs for both the small group and individual markets

Note: 1. Approximately \$2.7 million of these costs are estimated below in the RIA, including the audit costs in Table IV.2 and the rest of these costs are estimated in section III.

3. Anticipated Benefits and Costs

Starting in 2014, individuals and small businesses will be able to use health insurance coverage purchased through Exchanges. The Congressional Budget Office estimated that the number of people enrolled in coverage through Exchanges will increase from 7 million in 2014 to 24 million in 2017.²⁵ Exchanges will create competitive marketplaces where qualified individuals and qualified employers can shop for insurance coverage, and are expected to reduce the unit price of quality insurance for the average consumer by pooling risk and promoting competition.

The final rule specifies the standards and processes for the oversight and accountability of entities responsible for operations of the Exchanges and reinsurance and risk adjustment programs. Affected entities include States that establish and operate Exchanges and administer reinsurance and risk adjustment programs; FFEs; issuers of QHPs; health insurance issuers offering coverage both through and outside of an Exchange when HHS operates risk adjustment or reinsurance on behalf of the State; and contractors of these organizations.

a. Benefits

This final rule implements oversight, record maintenance, and enforcement provisions that will ensure integrity of the reinsurance and risk adjustment programs, State Exchanges and FFE functions, and prevent fraud and abuse.

This final rule includes provisions that will create a system of oversight, financial integrity and program integrity in the Exchanges and the premium stabilization programs. The oversight requirements for the reinsurance and risk-adjustment programs will ensure that these programs are effective and efficient, and use program funds appropriately. The provisions of this final rule will also ensure that Federal funds are used appropriately by State Exchanges. By monitoring financial reports and overseeing State Exchange activities, HHS will safeguard the use of

Federal funds provided as cost-sharing reductions and advance payments of the premium tax credit, and provide value for taxpayers' dollars.

The provisions of this final rule also ensure that enrollees are promptly refunded any excess premium paid or any excess cost sharing they should not have paid. Individuals harmed by misconduct on the part of non-Exchange entities will also be eligible for a special enrollment period. A QHP is also required to promptly reassign an enrollee improperly assigned to a plan variation (or standard plan without cost-sharing reductions), minimizing consumer harm.

The annual application requirement for enrollee satisfaction survey vendors allows HHS to ensure that these entities participate in relevant training and post-training certification, follow protocols related to quality assurance and the use of HHS data, and adhere to privacy and security standards when handling data. This will help to ensure that ultimately the enrollee satisfaction survey data are reliable and valid and that the information is sufficiently protected.

b. Costs

Affected entities will incur costs to comply with the provisions of this final rule. Costs related to information collection requirements subject to PRA are discussed in detail in section III and include administrative costs incurred by States and issuers related to record maintenance and reporting requirements; and oversight and financial integrity standards. In this section we discuss other costs related to the provisions in this final rule.

States operating reinsurance programs are required to keep an accurate accounting for each benefit year, of all reinsurance funds received from HHS for reinsurance payments and for administrative expenses, as well as all claims for reinsurance payments from issuers of reinsurance-eligible plans, all payments made to those issuers, and all administrative expenses incurred. State-operated reinsurance programs will already have a system in place to track reinsurance funds received from HHS, claims from and payments to issuers, and expenses incurred to operate the reinsurance program. The cost for States

operating reinsurance programs to maintain any records associated with the reinsurance program was previously estimated in the RIA of the 2014 Payment Notice as being part of State administrative costs associated with operating the reinsurance program and are not included in this RIA.

State-operated reinsurance programs will submit to HHS annually and make public a summary report of their program operations, which will include a summary of the accounting kept pursuant to § 153.260(a). We assume that the data already collected and used to report to issuers and HHS will be the same used to prepare this annual report. Therefore, the cost associated with this requirement is the incremental time and cost to prepare an annual report to HHS and the public on program operations. We estimate it will take an insurance management analyst 16 hours (at \$51 per hour) and a senior manager 2 hours (at \$77 per hour) to prepare the report. Therefore, we estimate it will cost each State that operates reinsurance approximately \$970 to submit this report to HHS. Because two States will operate reinsurance programs in the 2014 benefit year, we estimate that an aggregate cost of \$1,940 as a result of this requirement in the first year. We note that HHS will provide a portion of the reinsurance contributions it collects to States operating reinsurance programs to support State administration of reinsurance payments, which will likely cover the costs associated with this requirement.

A State operating a risk adjustment program is required to maintain documents and records relating to the risk adjustment program, whether paper, electronic or in other media, for each benefit year for at least 10 years, and make them available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity. The documents and records must be sufficient to enable the evaluation of a State-operated risk adjustment program's compliance with Federal standards. States are also directed to ensure that their contractors, subcontractors, and agents maintain and make those documents and records available upon request from HHS, the OIG, the Comptroller General, or their

²⁵ "Effects on Health Insurance and the Federal Budget for the Insurance Coverage Provisions in the Affordable Care Act—May 2013 Baseline," Congressional Budget Office, May 14, 2013.

designees. States operating risk adjustment programs should already have the documents and records of accounting procedures needed for periodic audits. Therefore, we estimate that the additional burden associated with this requirement is the time, effort, and additional labor cost required to maintain and archive the records. We assume that it will take an insurance operations analyst 10 hours (at \$38.49 an hour) to maintain records. Therefore, the average cost for each State will be approximately \$385. Because one State will operate risk adjustment for the 2014 benefit year, we estimate an aggregate cost of \$385 to comply with this requirement in the first year.

A State operating a risk adjustment program is required to submit by December 31st of the first benefit year of operation an interim summary report on the first 10 months of risk adjustment activities, in order to obtain re-certification for the third benefit year. The cost of complying with this provision is the time and effort to write the interim report and submit it to HHS. We estimate it will take an insurance management analyst 16 hours (at \$51 per hour) and a senior manager 2 hours (at \$77 per hour) to prepare the interim summary report. Therefore, we estimate that it will cost each State operating risk adjustment \$970 to submit this report to HHS (an aggregate cost of \$970 in the 2014 benefit year). A State operating a risk adjustment program will submit and make public, a summary report of its risk adjustment program operations for each benefit year after the first benefit year for which the State operates

the program. This summary report will include the results of a programmatic and financial audit for each benefit year conducted by an independent qualified auditing entity. We believe the cost of this annual report will be the same as the cost of producing the interim first-year report described above, except for the cost of independent external audits required in subsequent years. The costs related to the annual external audit are estimated later in this RIA. These estimates also include the administrative costs related to the requirement for State-operated risk adjustment programs to keep accurate accounting for each benefit year of all receipts and expenditures related to risk adjustment payments, charges, and administration of the program.

States face a variety of costs due to the monitoring requirements in this final rule. Conducting oversight of the Exchanges, State-operated risk adjustment and reinsurance programs, administration of the advance payments of the premium tax credit or cost-sharing reductions, and other activities require independent external audits, investigations, rectification of errors, and the development of summary reports which will be submitted to HHS. The estimated total costs for independent external audits for State-operated reinsurance, risk adjustment and Exchange programs are presented in Table IV.2. It is expected that 18 States will establish State Exchanges in 2014 and, without further information; we assume that number will stay the same during the period covered by the RIA. We also assume that each State will

conduct a financial audit and a programmatic audit annually, which will encompass the reinsurance and risk adjustment programs if the State operates these programs. Financial audit costs are estimated based on prices among the big four audit firms for governmental entities of similar size to those of the anticipated State Exchanges for a financial statement audit and Yellowbook Report (report on internal controls) that reflects different levels of cost for small, medium, and large entities, for entities with low, medium, and high risk. Programmatic audit estimates reflect the experience of Federal entitlement programs similar to Medicaid, audited under an A-133 program compliance supplement, and vary only by the size of the program (small, medium and large). For example, a small Exchange judged to have low risk is estimated to have a combined financial and programmatic audit cost of \$90,000; a large Exchange, in a State that also administers a reinsurance program (which implies a more complex, high risk operation) is estimated to have combined financial and programmatic audit costs of \$360,000. Audit prices are based on 2012 pricing and reflect an annual increase of 3 percent each year, based on recent industry experience. It is expected that there will be four small State Exchanges, 12 medium size State Exchanges and two large State Exchanges. The lower bound of the range in Table IV.2 below assumes that all State Exchanges have low risk and the upper bound is calculated assuming that all State Exchanges have high risk.

TABLE IV.2—ESTIMATED AUDIT COSTS FOR STATE PROGRAMS: EXCHANGES, RISK ADJUSTMENT AND REINSURANCE

	2014	2015	2016	2017
Mid-range point estimate	\$2,572,000	\$2,649,160	\$2,728,635	\$2,810,494
Range	\$2,320,000–\$2,820,000	\$2,389,600–\$2,904,600	\$2,461,288–\$2,991,738	\$2,535,127–\$3,081,490

A State operating a SHOP-only Exchange will be able to establish and operate a risk adjustment program for both the small group and individual markets starting in 2015, which will allow it to minimize costs by achieving economies of scale and reduce compliance costs for issuers. The approach to allowable costs will be operationally simpler for issuers to implement and thus minimize related costs.

The final rule permits QHP issuers to use the simplified methodology to calculate cost-sharing reductions during a transitional period and postpone a more costly IT implementation that

would be required for the standard methodology. The costs related to the administration of cost-sharing reductions using the standard methodology are accounted for in the 2014 Payment Notice and are not included here. However, as explained in section III, the provisions of this final rule allowing the use of a simplified methodology during the transitional period are likely to result in a reduction in costs estimated to be approximately \$57.7 million.²⁶

²⁶ These cost savings have not been accounted for in the RIA since they are mostly due to a postponement of IT implementation necessary for using the standard methodology. QHP issuers will

The final rule requires the enrollee satisfaction survey vendors engaged by issuers to meet HHS standards. Survey vendors will apply for approval annually in order to administer enrollee satisfaction surveys to QHP enrollees on behalf of a QHP issuer. Survey vendors will incur costs to submit the annual applications to HHS and to meet the requirements necessary to meet approval.

C. Regulatory Alternatives

Under the Executive Order, HHS is required to consider alternatives to

incur those costs at the end of the transitional period.

issuing rules and alternative regulatory approaches. HHS considered the following alternatives while developing this final rule:

1. Increased Uniformity of FFE and State Exchange Standards

Under this alternative, HHS would have required a single standard for Exchanges across the nation regardless of whether the Exchange was established and operated by a State or was Federally-facilitated. The final rule defers to State discretion in oversight of QHPs. This element of State flexibility would have been precluded if greater uniformity in operations and standards were to be imposed. Greater standardization would have had an uncertain impact on Federal oversight activities but would have likely imposed greater costs of compliance on State operations and issuers of QHPs in those States.

2. Place More Responsibility on the States To Oversee Standards, Including Those for FFEs

Under this alternative, HHS would have placed more responsibility on States and State Exchanges to interpret and meet statutory requirements. This approach could have created a number of problems. If every State developed its own monitoring standards, oversight of different Exchanges could be quite uneven, as States across the country have varying levels of fiscal resources with which to monitor activities. States currently have certain levels of responsibility under the Affordable Care Act to oversee standards for Exchanges, QHPs, and other programs. State Exchanges also have latitude in the number, type, and standardization of plans they certify and accept into the Exchange as QHPs.

There are a number of provisions in the Affordable Care Act that devolve responsibilities from the Federal government to States. Increased devolution could have decreased the need of Federal oversight, while granting States increased flexibility to regulate Exchanges within their borders. There would also have been a decrease in oversight-related activities for the Federal government such as HHS investigations or audits. On the other hand, States would have likely faced an increase in their own oversight activities and related costs.

3. Require QHP Issuers To Use the Standard Methodology To Reconcile Cost-Sharing Reductions.

HHS considered not promulgating the simplified methodology during a transition period. However, doing so

could have imposed costly IT system build requirements on many issuers at a time when QHP issuers are required to make many significant IT and operational changes.

HHS believes that the options adopted in this final rule strike the best balance of ensuring efficient operation and integrity of Exchanges and the premium stabilization programs while providing flexibility to the States and minimizing the burden on States.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies that issue a rule to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The RFA generally defines a “small entity” as— (1) A proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a nonprofit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000 (States and individuals are not included in the definition of “small entity”). HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 percent to 5 percent. HHS anticipates that this final rule will not have a significant economic impact on a substantial number of small entities.

As discussed in the Web Portal interim final rule with comment period published on May 5, 2010 (75 FR 24481), HHS examined the health insurance industry in depth in the RIA we prepared for the proposed rule on the establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). In that analysis it was determined that there were few, if any, insurance firms underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) that fell below the size thresholds for “small” business established by the SBA (currently \$35.5 million in annual receipts for health insurance issuers).²⁷ In addition, HHS used the data from Medical Loss Ratio (MLR) annual report submissions for the 2012 MLR reporting year to develop an estimate of the number of small entities that offer comprehensive major medical coverage. These estimates may overstate the actual number of small health insurance issuers that will be affected,

²⁷ “Table of Small Business Size Standards Matched To North American Industry Classification System Codes,” effective July 23, 2013, U.S. Small Business Administration, available at <http://www.sba.gov>.

since they do not include receipts from these companies’ other lines of business. It is estimated that out of 510 issuers nationwide, there are 58 small entities each with less than \$35.5 million in earned premiums that offer individual or group health insurance coverage and will therefore be subject to the requirements of this final regulation. Forty three percent of these small issuers belong to larger holding groups, and many if not all of these small issuers are likely to have other lines of business that will result in their revenues exceeding \$35.5 million. It is uncertain how many of these 510 issuers will offer QHPs and be subject to the provisions of this final rule. Based on this analysis, however, HHS expects that this final rule will not affect small issuers.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 requires that agencies assess anticipated costs and benefits before issuing any final rule that includes a Federal mandate that could result in expenditure in any one year by State, local or tribal governments, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold level is approximately \$141 million.

UMRA does not address the total cost of a final rule. Rather, it focuses on certain categories of cost, mainly those “Federal mandate” costs resulting from—(1) imposing enforceable duties on State, local, or tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, State, local, or tribal governments under entitlement programs.

The final rule directs States to undertake oversight activities for State Exchanges, State-operated reinsurance and risk adjustment programs. The costs related to oversight activities, recordkeeping, reporting and audits are estimated to be approximately \$2.8 million in 2014. There are no mandates on local or tribal governments. The private sector, for example, QHP issuers and agents and brokers, will incur costs to comply with the record maintenance and reporting requirements set forth in this final rule. The related costs are estimated to be approximately \$14.2 million in 2014. However, QHP issuers are also expected to experience a cost savings of approximately \$57.7 million by adopting the simplified methodology to calculate cost sharing reductions during a transitional period and postponing costly IT implementation.

Consistent with the policy embodied in UMRA, this final rule has been designed to be a low-burden alternative for State, local and tribal governments, and the private sector while achieving the objectives of the Affordable Care Act.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

States are the primary regulators of health insurance coverage. States will continue to apply State laws regarding health insurance coverage. However, if any State law or requirement prevents the application of a Federal standard, then that particular State law or requirement would be preempted. State requirements that are more stringent than the Federal requirements would be not be preempted by this final rule. Accordingly, States have significant latitude to impose requirements with respect to health insurance coverage that are more restrictive than the Federal law.

The State Exchange oversight program builds on State oversight efforts, where possible, by coordinating with State authorities to address compliance issues and concerns. Because QHPs are one of several commercial market insurance products operating in State markets, HHS will not seek to inappropriately duplicate or interfere with the traditional regulatory roles played by the State DOIs. HHS will generally confine its QHP oversight to Exchange-specific requirements and attributes. HHS will also seek to work collaboratively with State DOIs on topics of mutual concern, in the interest of efficiently deploying oversight resources and avoiding needlessly duplicative regulatory roles. QHP issuers are expected to comply with standards established by State law and regulation for cases forwarded to an issuer by a State in which it offers QHPs.

The requirements specified in this final rule will impose direct costs on State and local governments and HHS has attempted to minimize those costs. State Exchanges and State-operated reinsurance and risk adjustment programs are required to undertake oversight, record maintenance and reporting activities.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policymaking discretion of the

States, HHS has engaged in efforts to consult with and work cooperatively with affected States. Throughout the process of developing this final rule, HHS has attempted to balance the States' interests in regulating health insurance issuers, and the Congress' intent to provide uniform protections to consumers in every State. By doing so, it is HHS's view that it has complied with the requirements of Executive Order 13132. Under the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this rule, HHS certifies that the CMS Center for Consumer Information and Insurance Oversight has complied with the requirements of Executive Order 13132 for the attached final rule in a meaningful and timely manner.

G. Congressional Review Act

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to the Congress and the Comptroller General for review.

List of Subjects

45 CFR Part 144

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

45 CFR Part 153

Administrative practice and procedure, Adverse selection, Health care, Health insurance, Health records, Organization and functions (Government agencies), Premium stabilization, Reporting and recordkeeping requirements, Reinsurance, Risk adjustment, Risk corridors, Risk mitigation, State and local governments.

45 CFR Part 155

Administrative practice and procedure, Health care access, Health

insurance, Reporting and recordkeeping requirements, State and local governments, Cost-sharing reductions, Advance payments of premium tax credit, Administration and calculation of advance payments of the premium tax credit, Plan variations, Actuarial value.

45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory Committees, Brokers, Conflict of interest, Consumer protection, Cost-sharing reductions, Cost-sharing reduction reconciliation, Administration and calculation of advance payments of the premium tax credit, Payment and Collection Reports, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, American Indian/Alaska Natives, Individuals with disabilities, Loan programs—health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR parts 144, 146, 147, 153, 155, and 156 as set forth below:

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

■ 1. The authority citation for part 144 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act 42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92.

■ 2. Section 144.102 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 144.102 Scope and applicability.

* * * * *

(c) * * * If the coverage is offered to an association member other than in connection with a group health plan, the coverage is considered individual health insurance coverage for purposes of 45 CFR parts 144 through 148.

* * * * *

■ 3. Section 144.103 is amended by revising the introductory text and the definitions of “Group market,” “Individual market,” “Large employer,” “Policy year,” and “Small employer” to read as follows:

§ 144.103 Definitions.

For purposes of parts 146 (group market), 147 (group and individual market), 148 (individual market), and 150 (enforcement) of this subchapter, the following definitions apply unless otherwise provided:

* * * * *

Group market means the market for health insurance coverage offered in connection with a group health plan.

* * * * *

Individual market means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

* * * * *

Large employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 101 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define large employer by substituting “51 employees” for “101 employees.”

* * * * *

Policy year means, with respect to—

(1) A grandfathered health plan offered in the individual health insurance market, the 12-month period that is designated as the policy year in the policy documents of the individual health insurance coverage. If there is no designation of a policy year in the policy document (or no such policy document is available), then the policy year is the deductible or limit year used under the coverage. If deductibles or other limits are not imposed on a yearly basis, the policy year is the calendar year.

(2) A non-grandfathered health plan offered in the individual health insurance market, or in a market in which the State has merged the individual and small group risk pools, for coverage issued or renewed beginning January 1, 2014, a calendar year for which health insurance coverage provides coverage for health benefits.

* * * * *

Small employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define small

employer by substituting “50 employees” for “100 employees.”

* * * * *

PART 146—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 4. The authority citation for part 146 continues to read as follows:

Authority: Secs. 2702 through 2705, 2711 through 2723, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 200gg–91, and 300gg–92) (1996).

Section 146.145 also issued under secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended (2010).

§ 146.145 [Amended]

■ 5. Section 146.145 is amended by—

■ A. Removing paragraph (b).

■ B. Redesignating paragraphs (c) through (e) as paragraphs (b) through (d).

■ C. In redesignated paragraph (b), removing references to “paragraph (c)” and adding in their place “paragraph (b)” wherever they appear in the following places:

■ i. Paragraph (b)(1).

■ ii. Paragraph (b)(3)(i).

■ iii. Paragraph (b)(3)(ii).

■ iv. Paragraph (b)(4)(i).

■ v. Paragraph (b)(4)(ii).

■ vi. Paragraph (b)(4)(iii) and Conclusion.

■ vii. Paragraph (b)(5)(ii) and Conclusion.

■ D. In redesignated paragraph (c), removing references to “paragraph (d)” and adding in their place “paragraph (c)” wherever they appear in the following places:

■ i. Paragraph (c)(1).

■ ii. Paragraph (c)(3).

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 6. The authority citation for part 147 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 7. Section 147.104 is amended by revising paragraph (a), adding a sentence at the end of paragraph (b)(2), and revising paragraphs (c)(2), (d)(1)(ii), and (d)(2) introductory text to read as follows:

§ 147.104 Guaranteed availability of coverage.

(a) *Guaranteed availability of coverage in the individual and group market.* Subject to paragraphs (b) through (d) of this section, a health insurance issuer that offers health insurance coverage in the individual, small group, or large group market in a State must offer to any individual or employer in the State all products that are approved for sale in the applicable market, and must accept any individual or employer that applies for any of those products.

* * * * *

(b) * * *

(2) * * * Health insurance coverage in the individual market or in a market in which the State has merged the individual and small group risk pools must be offered on a calendar year basis.

* * * * *

(c) * * *

(2) An issuer that denies health insurance coverage to an individual or an employer in any service area, in accordance with paragraph (c)(1)(ii) of this section, may not offer coverage in the individual, small group, or large group market, as applicable, for a period of 180 calendar days after the date the coverage is denied. This paragraph (c)(2) does not limit the issuer's ability to renew coverage already in force or relieve the issuer of the responsibility to renew that coverage.

* * * * *

(d) * * *

(1) * * *

(ii) It is applying this paragraph (d)(1) uniformly to all employers or individual in the large group, small group, or individual market, as applicable, in the State consistent with applicable State law and without regard to the claims experience of those individuals, employers and their employees (and their dependents) or any health status-related factor relating to such individuals, employees, and dependents.

(2) An issuer that denies health insurance coverage to any employer or individual in a state under paragraph (d)(1) of this section may not offer coverage in the large group, small group, or individual market, as applicable, in the State before the later of either of the following dates:

* * * * *

■ 8. Section 147.106 is amended by revising paragraphs (a) and (d)(1) introductory text to read as follows:

§ 147.106 Guaranteed renewability of coverage.

(a) *General rule.* Subject to paragraphs (b) through (d) of this section, a health insurance issuer offering health insurance coverage in the individual, small group, or large group market is required to renew or continue in force the coverage at the option of the plan sponsor or the individual, as applicable.

* * * * *

(d) * * *

(1) An issuer may elect to discontinue offering all health insurance coverage in the individual, small group, or large group market, or all markets, in a State in accordance with applicable State law only if—

* * * * *

PART 153—STANDARDS RELATED TO REINSURANCE, RISK CORRIDORS, AND RISK ADJUSTMENT UNDER THE AFFORDABLE CARE ACT

■ 9. The authority citation for part 153 is revised to read as follows:

Authority: Secs. 1311, 1321, 1341–1343, Pub. L. 111–148, 24 Stat. 119.

■ 10. Section 153.20 is amended by revising the definition of “contributing entity” to read as follows:

§ 153.20 Definitions.

* * * * *

Contributing entity means a health insurance issuer or a self-insured group health plan (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage). A self-insured group health plan is responsible for the reinsurance contributions, although it may elect to use a third party administrator or administrative services-only contractor for transfer of the reinsurance contributions.

* * * * *

■ 11. Section 153.240 is amended by revising paragraph (c) to read as follows:

§ 153.240 Disbursement of reinsurance payments.

* * * * *

(c) *Maintenance of records.* If a State establishes a reinsurance program, the State must maintain documents and records relating to the reinsurance program, whether paper, electronic, or in other media, for each benefit year for at least 10 years, and make them available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity. The documents and records must be sufficient to enable the evaluation of the State-operated reinsurance program’s

compliance with Federal standards. The State must also ensure that its contractors, subcontractors, and agents similarly maintain and make relevant documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity.

* * * * *

■ 12. Section 153.260 is added to subpart C to read as follows:

§ 153.260 General oversight requirements for State-operated reinsurance programs.

(a) *Accounting requirements.* A State that establishes a reinsurance program must ensure that its applicable reinsurance entity keeps an accounting for each benefit year of:

(1) All reinsurance contributions received from HHS for reinsurance payments and for administrative expenses;

(2) All claims for reinsurance payments received from issuers of reinsurance-eligible plans;

(3) All reinsurance payments made to issuers of reinsurance-eligible plans; and

(4) All administrative expenses incurred for the reinsurance program.

(b) *State summary report.* A State that establishes a reinsurance program must submit to HHS and make public a report on its reinsurance program operations for each benefit year in the manner and timeframe specified by HHS. The report must summarize the accounting for the benefit year kept pursuant to paragraph (a) of this section.

(c) *Independent external audit.* A State that establishes a reinsurance program must engage an independent qualified auditing entity to perform a financial and programmatic audit for each benefit year of its State-operated reinsurance program in accordance with generally accepted auditing standards (GAAS). The State must:

(1) Provide to HHS the results of the audit, in the manner and timeframe to be specified by HHS;

(2) Ensure that the audit addresses the prohibitions set forth in § 153.265;

(3) Identify to HHS any material weakness or significant deficiency identified in the audit, and address in writing to HHS how the State intends to correct any such material weakness or significant deficiency; and

(4) Make public a summary of the results of the audit, including any material weakness or significant deficiency and how the State intends to correct the material weakness or significant deficiency, in the manner and timeframe to be specified by HHS.

■ 13. Section 153.265 is added to subpart C to read as follows:

§ 153.265 Restrictions on use of reinsurance funds for administrative expenses.

A State that establishes a reinsurance program must ensure that its applicable reinsurance entity does not use any funds for the support of reinsurance operations, including any reinsurance contributions provided under the national contribution rate for administrative expenses, for any of the following purposes:

(a) Staff retreats;

(b) Promotional giveaways;

(c) Excessive executive compensation; or

(d) Promotion of Federal or State legislative or regulatory modifications.

■ 14. Section 153.310 is amended by:

A. Adding paragraph (c)(4).

B. Revising the paragraph (d) subject heading and adding paragraphs (d)(3) and (4).

C. Removing paragraph (f).

The additions and revision read as follows:

§ 153.310 Risk adjustment administration.

* * * * *

(c) * * *

(4) *Maintenance of records.* A State operating a risk adjustment program must maintain documents and records relating to the risk adjustment program, whether paper, electronic, or in other media, for each benefit year for at least 10 years, and make them available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity. The documents and records must be sufficient to enable the evaluation of the State-operated risk adjustment program’s compliance with Federal standards. A State operating a risk adjustment program must also ensure that its contractors, subcontractors, and agents similarly maintain and make relevant documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity.

(d) *Approval for a State to operate risk adjustment.* * * *

(3) In addition to requirements set forth in paragraphs (d)(1) and (2) of this section, to obtain re-approval from HHS to operate risk adjustment for a third benefit year, the State must, in the first benefit year for which it operates risk adjustment, provide to HHS an interim report, in a manner specified by HHS, including a detailed summary of its risk adjustment activities in the first 10 months of the benefit year, no later than December 31 of the applicable benefit year.

(4) To obtain re-approval from HHS to operate risk adjustment for each benefit year after the third benefit year, each

State operating a risk adjustment program must submit to HHS and make public a detailed summary of its risk adjustment program operations for the most recent benefit year for which risk adjustment operations have been completed, in the manner and timeframe specified by HHS.

(i) The summary must include the results of a programmatic and financial audit for each benefit year of the State-operated risk adjustment program conducted by an independent qualified auditing entity in accordance with generally accepted auditing standards (GAAS).

(ii) The summary must identify any material weakness or significant deficiency identified in the audit and address how the State intends to correct any such material weakness or significant deficiency.

■ 15. Section 153.365 is added to subpart D to read as follows:

§ 153.365 General oversight requirements for State-operated risk adjustment programs.

If a State is operating a risk adjustment program, it must keep an accounting of all receipts and expenditures related to risk adjustment payments and charges and the administration of risk adjustment-related functions and activities for each benefit year.

■ 16. Section 153.400 is amended by revising paragraph (a)(1)(i) and adding paragraph (a)(3) to read as follows:

§ 153.400 Reinsurance contribution funds.

(a) * * *

(1) * * *

(i) Such plan or coverage is not major medical coverage, subject to paragraph (a)(3) of this section.

* * * * *

(3) Notwithstanding paragraph (a)(1)(i) of this section, a health insurance issuer must make reinsurance contributions for lives covered by its group health insurance coverage whether or not the insurance coverage constitutes major medical coverage, if—

(i) The group health plan provides health insurance coverage for those covered lives through more than one insurance policy that in combination constitute major medical coverage;

(ii) The lives are not covered by self-insured coverage of the group health plan (except for self-insured coverage limited to excepted benefits); and

(iii) The health insurance coverage under the policy offered by the health insurance issuer constitutes the greatest portion of inpatient hospitalization benefits under the group health plan.

* * * * *

■ 17. Section 153.405 is amended by adding paragraph (h) to read as follows:

§ 153.405 Calculation of reinsurance contributions.

* * * * *

(h) *Maintenance of records.* A contributing entity must maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the enrollment count submitted pursuant to this section for a period of at least 10 years, and must make those documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity, for purposes of verification, investigation, audit, or other review of reinsurance contribution amounts.

■ 18. Section 153.410 is amended by adding paragraph (c) to read as follows:

§ 153.410 Requests for reinsurance payment.

* * * * *

(c) *Maintenance of records.* An issuer of a reinsurance-eligible plan must maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the requests for reinsurance payments made pursuant to this section for a period of at least 10 years, and must make those documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees, or, in a State where the State is operating reinsurance, the State or its designee, to any such entity, for purposes of verification, investigation, audit, or other review of reinsurance payment requests.

■ 19. Section 153.510 is amended by adding paragraph (e)

§ 153.510 Risk corridors establishment and payment methodology

* * * * *

(e) A QHP issuer is not subject to the provisions of this subpart with respect to a stand-alone dental plan.

■ 20. Section 153.520 is amended by revising paragraphs (a), (b), and (e) to read as follows:

§ 153.520 Attribution and allocation of revenue and expense items.

(a) *Attribution to plans.* Each item of expense in the target amount with respect to a QHP must be reasonably attributable to the operation of the QHP issuer's non-grandfathered health plans in a market within a State, with the attribution based on a generally accepted accounting method, consistently applied. To the extent that a QHP issuer utilizes a specific method for allocating expenses for purposes of

§ 158.170 of this subchapter, the method used for purposes of this paragraph must be consistent.

(b) *Allocation across plans.* Each item of expense in the target amount must reflect an amount equal to the pro rata portion of the aggregate amount of such expense across all of the QHP issuer's non-grandfathered health plans in a market within a State, allocated to the QHP based on premiums earned.

* * * * *

(e) *Maintenance of records.* A QHP issuer must maintain documents and records, whether paper, electronic, or in other media, sufficient to enable the evaluation of the issuer's compliance with applicable risk corridors standards, for each benefit year for at least 10 years, and must make those documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity, for purposes of verification, investigation, audit or other review.

■ 21. Section 153.530 is amended by revising paragraphs (b) and (c) to read as follows:

§ 153.530 Risk corridors data requirements.

* * * * *

(b) *Allowable costs.* A QHP issuer must submit to HHS data on the allowable costs incurred with respect to the QHP issuer's non-grandfathered health plans in a market within a State in a manner specified by HHS. For purposes of this subpart, allowable costs must be —

(1) Increased by any risk adjustment charges paid by the issuer for the non-grandfathered health plans under the risk adjustment program established under subpart D of this part.

(i) Any risk adjustment charges paid by the issuer for the non-grandfathered health plans under the risk adjustment program established pursuant to subpart D of this part; and

(ii) Any reinsurance contributions made by the issuer for the non-grandfathered health plans under the transitional reinsurance program established pursuant to subpart C of this part.

(2) Reduced by —

(i) Any risk adjustment payments received by the issuer for the non-grandfathered health plans under the risk adjustment program established pursuant to subpart D of this part;

(ii) Any reinsurance payments received by the issuer for the non-grandfathered health plans under the transitional reinsurance program established pursuant to subpart C of this part; and

(iii) Any cost-sharing reduction payments received by the issuer for the QHP issuer's QHPs in a market within a State to the extent not reimbursed to the provider furnishing the item or service.

(c) *Allowable administrative costs.* A QHP issuer must submit to HHS data on the allowable administrative costs incurred with respect to the QHP issuer's non-grandfathered health plans in a market within a State in a manner specified by HHS.

* * * * *

■ 22. Section 153.620 is amended by revising paragraph (b) to read as follows:

§ 153.620 Compliance with risk adjustment standards.

* * * * *

(b) *Issuer records maintenance requirements.* An issuer that offers risk adjustment covered plans must also maintain documents and records, whether paper, electronic, or in other media, sufficient to enable the evaluation of the issuer's compliance with applicable risk adjustment standards, for each benefit year for at least 10 years, and must make those documents and records available upon request to HHS, the OIG, the Comptroller General, or their designees, or in a State where the State is operating risk adjustment, the State or its designee to any such entity, for purposes of verification, investigation, audit or other review.

■ 23. Section 153.740 is added to subpart H to read as follows:

§ 153.740 Failure to comply with HHS-operated risk adjustment and reinsurance data requirements.

(a) *Enforcement actions.* If an issuer of a risk adjustment covered plan or reinsurance-eligible plan fails to establish a dedicated distributed data environment in a manner and timeframe specified by HHS; fails to provide HHS with access to the required data in such environment in accordance with § 153.700(a) or otherwise fails to comply with the requirements of §§ 153.700 through 153.730; fails to adhere to the reinsurance data submission requirements set forth in § 153.420; or fails to adhere to the risk adjustment data submission and data storage requirements set forth in §§ 153.610 through 153.630, HHS may impose civil money penalties in accordance with the procedures set forth in § 156.805 of this subchapter. Civil monetary penalties will not be imposed for non-compliance with these requirements during 2014 pursuant to this paragraph (a) if the issuer has made good faith efforts to comply with these requirements.

(b) *Default risk adjustment charge.* If an issuer of a risk adjustment covered plan fails to establish a dedicated distributed data environment or fails to provide HHS with access to the required data in such environment in accordance with § 153.610(a), § 153.700, § 153.710, or § 153.730 such that HHS cannot apply the applicable Federally certified risk adjustment methodology to calculate the risk adjustment payment transfer amount for the risk adjustment covered plan in a timely fashion, HHS will assess a default risk adjustment charge.

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 24. The authority citation for part 155 is revised to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1332, 1334, 1402, 1411, 1412, 1413, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083).

■ 25. Section 155.340 is amended by adding paragraph (h) to read as follows:

§ 155.340 Administration of advance payments of the premium tax credit and cost-sharing reductions.

* * * * *

(h) *Failure to reduce enrollee's premiums to account for advance payments of the premium tax credit.* If the Exchange discovers that it did not reduce an enrollee's premium by the amount of the advance payment of the premium tax credit, then the Exchange must notify the enrollee of the improper reduction within 45 calendar days of discovery of the improper reduction and refund the enrollee any excess premium paid by or for the enrollee as follows:

(1) Unless a refund is requested by or for the enrollee, the Exchange must, within 45 calendar days of discovery of the error, apply the excess premium paid by or for the enrollee to the enrollee's portion of the premium (or refund the amount directly). If any excess premium remains, the Exchange must then apply the excess premium to the enrollee's portion of the premium for each subsequent month for the remainder of the period of enrollment or benefit year until the excess premium is fully refunded (or refund the remaining amount directly). If any excess premium remains at the end of the period of enrollment or benefit year, the Exchange must refund any excess premium within 45 calendar days of the end of the

period of enrollment or benefit year, whichever comes first.

(2) If a refund is requested by or for the enrollee, the refund must be provided within 45 calendar days of the date of the request.

■ 26. Section 155.420 is amended by adding paragraph (d)(10) to read as follows:

§ 155.420 Special enrollment periods.

* * * * *

(d) * * *

(10) It has been determined by the Exchange that a qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage; was not enrolled in the QHP selected by the qualified individual or enrollee; or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities. For purposes of this provision, misconduct includes, but is not limited to, the failure of the non-Exchange entity to comply with applicable standards under this part, part 156 of this subchapter, or other applicable Federal or State laws, as determined by the Exchange.

* * * * *

§ 155.725 [Amended]

■ 27. Section 155.725(j)(2)(i) is revised to read as follows:

* * * * *

(j) * * *
(2) * * *

(i) Experiences an event described in § 155.420(d)(1), (2), (4), (5), (7), (8), (9), or (10);

* * * * *

■ 28. Subpart M is added to read as follows:

Subpart M—Oversight and Program Integrity Standards for State Exchanges

Sec.

155.1200 General program integrity and oversight requirements.

155.1210 Maintenance of records.

Subpart M—Oversight and Program Integrity Standards for State Exchanges

§ 155.1200 General program integrity and oversight requirements.

(a) *General requirement.* A State Exchange must:

(1) Keep an accurate accounting of Exchange receipts and expenditures in accordance with generally accepted accounting principles (GAAP).

(2) Monitor and report to HHS on Exchange related activities.

(3) Collect and report to HHS performance monitoring data.

(b) *Reporting.* The State Exchange must, at least annually, provide to HHS, in a manner specified by HHS, the following data and information:

(1) A financial statement presented in accordance with GAAP by April 1 of each year,

(2) Eligibility and enrollment reports,

(3) Performance monitoring data, and

(4) If the Exchange is collecting premiums under § 155.240, a report on instances in which it did not reduce an enrollee's premium by the amount of the advance payment of the premium tax credit in accordance with § 155.340(g)(1) and (2).

(c) *External audits.* The State Exchange must engage an independent qualified auditing entity which follows generally accepted governmental auditing standards (GAGAS) to perform an annual independent external financial and programmatic audit and must make such information available to HHS for review. The State must:

(1) Provide to HHS the results of the annual external audit; and

(2) Inform HHS of any material weakness or significant deficiency identified in the audit and must develop and inform HHS of a corrective action plan for such material weakness or significant deficiency;

(3) Make public a summary of the results of the external audit.

(d) *External audit standard.* The State Exchange must ensure that independent audits of State Exchange financial statements and program activities in paragraph (c) of this section address:

(1) Compliance with paragraph (a)(1) of this section;

(2) Compliance with requirements under this part;

(3) Processes and procedures designed to prevent improper eligibility determinations and enrollment transactions; and

(4) Identification of errors that have resulted in incorrect eligibility determinations.

§ 155.1210 Maintenance of records.

(a) *General.* The State Exchange must maintain and must ensure its contractors, subcontractors, and agents maintain for 10 years, documents and records (whether paper, electronic, or other media) and other evidence of accounting procedures and practices, which are sufficient to do the following:

(1) Accommodate periodic auditing of the State Exchange's financial records; and

(2) Enable HHS or its designee(s) to inspect facilities, or otherwise evaluate the State-Exchange's compliance with Federal standards.

(b) *Records.* The State Exchange and its contractors, subcontractors, and agents must ensure that the records specified in paragraph (a) of this section include, at a minimum, the following:

(1) Information concerning management and operation of the State Exchange's financial and other record keeping systems;

(2) Financial statements, including cash flow statements, and accounts receivable and matters pertaining to the costs of operations;

(3) Any financial reports filed with other Federal programs or State authorities;

(4) Data and records relating to the State Exchange's eligibility verifications and determinations, enrollment transactions, appeals, and plan variation certifications; and

(5) Qualified health plan contracting (including benefit review) data and consumer outreach and Navigator grant oversight information.

(c) *Availability.* A State Exchange must make all records and must ensure its contractors, subcontractors, and agents must make all records in paragraph (a) of this section available to HHS, the OIG, the Comptroller General, or their designees, upon request.

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 29. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301–1304, 1311–1313, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, Pub. L. 111–148, 124 Stat. 119 42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

■ 30. Section 156.20 is amended by adding definitions in alphabetical order for “Enrollee satisfaction survey vendor” and “Registered user of the enrollee satisfaction survey data warehouse” to read as follows:

§ 156.20 Definitions

* * * * *

Enrollee satisfaction survey vendor means an organization that has relevant survey administration experience (for example, CAHPS® surveys), organizational survey capacity, and quality control procedures for survey administration.

* * * * *

Registered user of the enrollee satisfaction survey data warehouse means enrollee satisfaction survey vendors, QHP issuers, and Exchanges

authorized to access CMS's secure data warehouse to submit survey data and to preview survey results prior to public reporting.

■ 31. Section 156.80 is amended by revising the first sentence of paragraph (d)(1) and adding paragraph (d)(3) to read as follows:

§ 156.80 Single risk pool.

* * * * *

(d) * * *

(1) *In general.* A health insurance issuer must establish an index rate that is effective January 1 of each calendar year for a state market described in paragraphs (a) through (c) of this section based on the total combined claims costs for providing essential health benefits within the single risk pool of that state market. * * *

* * * * *

(3) *Frequency of index rate and plan-level adjustments.* (i) A health insurance issuer may not establish an index rate and make the market-wide adjustments pursuant to paragraph (d)(1) of this section, or make the plan-level adjustments pursuant to paragraph (d)(2) of this section, more or less frequently than annually, except as provided in paragraph (d)(3)(ii) of this section.

(ii) Beginning the quarter after HHS issues notification that the FF-SHOP can process quarterly rate updates, a health insurance issuer in the small group market (not including a merged market) may establish index rates and make the market-wide adjustments pursuant to paragraph (d)(1) of this section, and make the plan-level adjustments pursuant to paragraph (d)(2) of this section, no more frequently than quarterly, provided that any changes to rates must have effective dates of January 1, April 1, July 1, or October 1.

* * * * *

■ 32. Section 156.155 is amended by revising paragraph (a)(3) to read as follows:

§ 156.155 Enrollment in catastrophic plans.

(a) * * *

(3) Provides coverage of the essential health benefits under section 1302(b) of the Affordable Care Act, except that the plan provides no benefits for any plan year (except as provided in paragraphs (a)(4) and (b) of this section) until the annual limitation on cost sharing in section 1302(c)(1) of the act is reached.

* * * * *

■ 33. Section 156.330 is added to subpart D to read as follows:

§ 156.330 Changes of Ownership of Issuers of Qualified Health Plans in Federally-facilitated Exchanges.

When a QHP issuer that offers one or more QHPs in a Federally-facilitated Exchange undergoes a change of ownership as recognized by the State in which the issuer offers the QHP, the QHP issuer must notify HHS of the change in a manner to be specified by HHS, and provide the legal name and Taxpayer Identification Number (TIN) of the new owner and the effective date of the change at least 30 days prior to the effective date of the change of ownership. The new owner must agree to adhere to all applicable statutes and regulations.

■ 34. Section 156.400 is amended by revising the definition of “*Most generous or more generous*” to read as follows:

§ 156.400 Definitions.

* * * * *

Most generous or more generous means, as between a QHP (including a standard silver plan) or plan variation and one or more other plan variations of the same QHP, the standard plan or plan variation designed for the category of individuals last listed in § 155.305(g)(3) of this subchapter. *Least generous or less generous* has the opposite meaning.

* * * * *

■ 35. Section 156.410 is amended by adding paragraphs (c) and (d) to read as follows:

§ 156.410 Cost-sharing reductions for enrollees.

* * * * *

(c) *Improper cost-sharing reductions.*

(1) If a QHP issuer fails to ensure that an individual assigned to a plan variation receives the cost-sharing reductions required under the applicable plan variation, taking into account § 156.425(b) concerning continuity of deductibles and out-of-pocket amounts (if applicable), then the QHP issuer must notify the enrollee of the improper application of any cost-sharing reduction within 45 calendar days of discovery of such improper application, and refund any resulting excess cost sharing paid by or for the enrollee as follows:

(i) If the excess cost sharing was paid by the provider, the QHP issuer must refund the excess cost sharing to the provider within 45 calendar days of discovery of the improper application.

(ii) If the excess cost sharing was not paid by the provider and is not requested by the enrollee as a refund, the QHP issuer must, within 45 calendar days of discovery of the error, apply the excess cost sharing paid by or for the

enrollee to the enrollee's portion of the premium (or refund the amount directly). If any excess premium remains, the QHP issuer must apply the excess premium to the enrollee's portion of the premium for each subsequent month for the remainder of the period of enrollment or benefit year until the excess is fully applied (or refund any remaining amount directly). If any excess premium remains at the end of the period of enrollment or benefit year, the QHP issuer must refund the enrollee any remaining excess cost sharing paid by or for the enrollee within 45 calendar days of the end of the period of enrollment or benefit year, whichever comes first.

(iii) If the excess cost sharing was not paid by the provider, and if a refund is requested by the enrollee, the refund must be provided to the enrollee within 45 calendar days of the date of the request.

(2) If a QHP issuer provides an individual assigned to a plan variation greater cost-sharing reductions than required under the applicable plan variation, taking into account § 156.425(b) concerning continuity of deductibles and out-of-pocket amounts (if applicable), then the QHP issuer will not be eligible for reimbursement of any excess cost-sharing reductions provided to the enrollee, and may not seek reimbursement from the enrollee or the applicable provider for any of the excess cost-sharing reductions.

(d) *Improper assignment.* If a QHP issuer does not assign an individual to the applicable plan variation (or standard plan without cost-sharing reductions) in accordance with § 156.410(b) and § 156.425(a) based on the eligibility and enrollment information or notification provided by the Exchange, then the QHP issuer must reassign the enrollee to the applicable plan variation (or standard plan without cost-sharing reductions) and notify the enrollee of the improper assignment such that:

(1) If the QHP issuer discovers the improper assignment between the first and fifteenth day of the month, the QHP issuer must reassign the enrollee to the correct plan variation (or standard plan without cost-sharing reductions) by the first day of the following month.

(2) If the QHP issuer discovers the improper assignment between the sixteen and the last day of the month, the QHP issuer must reassign the individual to the correct plan variation (or standard plan without cost-sharing reductions) by the first day of the second following month.

(3) If, pursuant to a reassignment under this paragraph (d), a QHP issuer

reassigns an enrollee from a more generous plan variation to a less generous plan variation of a QHP (or a standard plan without cost-sharing reductions), the QHP issuer will not be eligible for reimbursement for any of the excess cost-sharing reductions provided to the enrollee following the effective date of eligibility required by the Exchange, and may not seek reimbursement from the enrollee or the applicable provider for any of the excess cost-sharing reductions.

(4) If, pursuant to a reassignment under this paragraph (d), a QHP issuer reassigns an enrollee from a less generous plan variation (or a standard plan without cost-sharing reductions) to a more generous plan variation of a QHP, the QHP issuer must recalculate the enrollee's liability for cost sharing paid between the effective date of eligibility required by the Exchange and the date on which the issuer effectuated the change, and must refund any excess cost sharing paid by or for the enrollee during such period as follows:

(i) If the excess cost sharing was paid by the provider, the QHP issuer must refund the excess cost sharing to the provider within 45 calendar days of discovery of the improper assignment.

(ii) If the excess cost sharing was not paid by the provider and is not requested by the enrollee as a refund, the QHP issuer must, within 45 calendar days of discovery of the improper assignment, apply the excess cost sharing paid by or for the enrollee to the enrollee's portion of the premium (or refund the amount directly). If any excess premium remains, the QHP issuer must apply the excess premium to the enrollee's portion of the premium for each subsequent month for the remainder of the period of enrollment or benefit year until the excess is fully applied (or refund the remaining amount directly). If any excess premium remains at the end of the period of enrollment or benefit year, the QHP issuer must refund the enrollee any remaining excess cost sharing paid by or for the enrollee within 45 calendar days of the end of the period of enrollment or benefit year, whichever comes first.

(ii) If the excess cost sharing was not paid by the provider, then, if the enrollee requests a refund, the refund must be provided to the enrollee within 45 calendar days of the date of the request.

■ 36. Section 156.430 is amended by revising paragraphs (c)(3) introductory text, (c)(3)(iii) through (iv), and (c)(4) to read as follows:

§ 156.430 Payment for cost-sharing reductions.

* * * * *

(c) * * *

(3) *Selection of methodology.* For benefit years 2014 through 2016, notwithstanding paragraph (c)(2) of this section, a QHP issuer may choose to calculate the amounts that would have been paid under the standard plan without cost-sharing reductions using the simplified methodology described in paragraph (c)(4) of this section.

* * * * *

(iii) The QHP issuer may not select the simplified methodology for a benefit year if the QHP issuer did not select the simplified methodology for the prior benefit year.

(iv) Notwithstanding paragraphs (c)(3)(ii) and (iii) of this section, if a QHP issuer merges with or acquires another issuer of a QHP on the Exchange, or acquires a QHP offered on the Exchange from another QHP issuer, and if one, but not all, of the merging, acquiring, or acquired parties had selected the simplified methodology for the benefit year, then for the benefit year in which the merger or acquisition took place, the QHP issuer must calculate the amounts that would have been paid using the methodology (whether the standard methodology described in paragraph (c)(2) of this section or the simplified methodology described in paragraph (c)(4) of this section) selected with respect to the plan variation prior to the start of the benefit year (even if the selection was not made by that QHP issuer). For the next benefit year (if such benefit year is 2015 or 2016), the QHP issuer may select the simplified methodology (subject to paragraph (c)(3)(ii) of this section but, for that benefit year, not paragraph (c)(3)(iii) of this section) or the standard methodology.

(4) *Simplified methodology.* Subject to paragraph (c)(4)(v) of this section, a QHP issuer that selects the simplified methodology described in this paragraph (c)(4) must calculate the amount that the enrollees would have paid under the standard plan without cost-sharing reductions for each policy that was assigned to a plan variation for any portion of the benefit year by applying each set of the standard plan's effective cost-sharing parameters (as calculated under paragraphs (c)(3)(ii) and (iii) of this section) to the corresponding subgroup of total allowed costs for EHB for the policy (as described in paragraph (c)(4)(i) of this section).

(i) For plan variation policies with total allowed costs for EHB for the benefit year that are:

(A) Less than or equal to the effective deductible, the amount that the enrollees would have paid under the standard plan is equal to the total allowed costs for EHB under the policy for the benefit year multiplied by the effective pre-deductible coinsurance rate.

(B) Greater than the effective deductible but less than the effective claims ceiling, the amount that the enrollees would have paid under the standard plan is equal to the sum of (x) the average deductible, plus (y) the effective non-deductible cost sharing, plus (z) the difference, if positive, between the total allowed costs under the policy for the benefit year for EHB that are subject to a deductible and the average deductible, multiplied by the effective post-deductible coinsurance rate.

(C) Greater than or equal to the effective claims ceiling, the amount that the enrollees would have paid under the standard plan is equal to the annual limitation on cost sharing for the standard plan (as defined at 45 CFR 156.400), or, at the QHP issuer's election on a policy-by-policy basis, the amount calculated pursuant to the standard methodology described in paragraph (c)(2) of this section.

(ii) The QHP issuer must calculate one or more sets of effective cost-sharing parameters, as described in paragraph (c)(4)(iii) of this section, based on policies assigned to the standard plan without cost-sharing reductions for the entire benefit year and must separately apply each set of effective cost-sharing parameters to the corresponding subgroup of total allowed costs for EHB for each plan variation policy, as described in paragraph (c)(4)(i) of this section, as follows:

(A) If the standard plan has separate cost-sharing parameters for self-only coverage and other than self-only coverage, but does not have separate cost-sharing parameters for pharmaceutical and medical services, the QHP issuer must calculate and apply separate sets of effective cost-sharing parameters based on the costs of enrollees in the standard plan with self-only coverage, and based on the costs of enrollees in the standard plan with other than self-only coverage.

(B) If the standard plan has separate cost-sharing parameters for pharmaceutical and medical services, but does not have separate cost-sharing parameters for self-only coverage and other than self-only coverage, the QHP issuer must calculate and apply separate sets of effective cost-sharing parameters based on the medical costs of the enrollees in the standard plan, and

based on the pharmaceutical costs of the enrollees in the standard plan.

(C) If the standard plan has separate cost-sharing parameters for self-only coverage and other than self-only coverage, and also has separate cost-sharing parameters for pharmaceutical and medical services, the QHP issuer must calculate and apply separate sets of effective cost-sharing parameters based on the medical costs of enrollees in the standard plan with self-only coverage, based on the pharmaceutical costs of enrollees in the standard plan with self-only coverage, based on the medical costs of enrollees in the standard plan with other than self-only coverage, and based on the pharmaceutical costs of enrollees in the standard plan with other than self-only coverage.

(iii) The effective cost-sharing parameters for the standard plan without cost-sharing reductions must be calculated based on policies assigned to the standard plan for the entire benefit year for each of the required subgroups under paragraph (c)(4)(ii) of this section as follows:

(A) If the standard plan has only one deductible (for the applicable subgroup), the average deductible of the standard plan is that deductible amount. If the standard plan has more than one deductible (for the applicable subgroup), the average deductible is the weighted average of the deductibles, weighted by allowed costs for EHB under the standard plan for the benefit year that are subject to each separate deductible. Services that are not subject to any deductible (including services subject to copayments or coinsurance but not any deductible) are not to be incorporated into the calculation of the average deductible.

(B) The effective non-deductible cost sharing for the applicable subgroup is the average portion of total allowed costs for EHB that are not subject to any deductible for the standard plan for the benefit year incurred for standard plan enrollees and payable by the enrollees as cost sharing. The effective non-deductible cost sharing must be calculated based only on standard plan policies with total allowed costs for EHB for the benefit year that are above the effective deductible but for which associated cost sharing for EHB is less than the annual limitation on cost sharing.

(C) The effective deductible for the applicable subgroup is equal to the sum of the average deductible and the average total allowed costs for EHB that are not subject to any deductible for the standard plan for the benefit year. The average total allowed costs for EHB that

are not subject to any deductible for the standard plan for the benefit year must be calculated based only on standard plan policies with total allowed costs for EHB for the benefit year that are above the average deductible but for which associated cost sharing for EHB is less than the annual limitation on cost sharing.

(D) The effective pre-deductible coinsurance rate for the applicable subgroup is the proportion of the total allowed costs for EHB under the standard plan for the benefit year incurred for standard plan enrollees and payable as cost sharing. The effective pre-deductible coinsurance rate must be calculated based only on standard plan policies with total allowed costs for EHB for the benefit year that are less than or equal to the effective deductible.

(E) The effective post-deductible coinsurance rate for the applicable subgroup is the quotient of (x) the portion of average allowed costs for EHB subject to a deductible incurred for enrollees for the benefit year, and payable by the enrollees as cost sharing other than through a deductible, over the difference of (y) the average allowed costs for EHB subject to a deductible incurred for enrollees for the benefit year, and (z) the average deductible. The effective post-deductible coinsurance rate must be calculated based only on standard plan policies with total allowed costs for EHB for the benefit year that are above the effective deductible but for which associated cost sharing for EHB is less than the annual limitation on cost sharing.

(F) The effective claims ceiling for the applicable subgroup is calculated as the effective deductible plus the quotient of (x) the difference between the annual limitation on cost sharing and the sum of the average deductible and the effective non-deductible cost sharing, divided by (y) the effective post-deductible coinsurance rate.

(iv) If a QHP issuer uses the simplified methodology described in this paragraph (c)(4), and the QHP issuer's standard plan does not meet any of the criteria in paragraphs (c)(4)(v)(A) through (D) of this section, the QHP issuer must also submit to HHS, in the manner and timeframe established by HHS, the following information for each standard plan offered by the QHP issuer in the individual market through the Exchange for each of the required subgroups described in paragraph (c)(4)(ii) of this section:

(A) The average deductible for each applicable subgroup;

(B) The effective deductible for each applicable subgroup;

(C) The effective non-deductible cost sharing amount for each applicable subgroup;

(D) The effective pre-deductible coinsurance rate for each applicable subgroup;

(E) The effective post-deductible coinsurance rate for each applicable subgroup;

(F) The effective claims ceiling for each applicable subgroup; and

(G) A memorandum developed by a member of the American Academy of Actuaries in accordance with generally accepted actuarial principles and methodologies that describes how the QHP issuer calculated the effective cost-sharing parameters for each applicable subgroup for the standard plan.

(v) Notwithstanding paragraphs (c)(4)(i) through (iii) of this section, if a QHP issuer's standard plan meets the criteria in any of the following subparagraphs, and the QHP issuer has selected the simplified methodology described in this paragraph (c)(4), then the QHP issuer must calculate the amount that the enrollees in the plan variation would have paid under the standard plan without cost-sharing reductions as the lesser of the annual limitation on cost sharing for the standard plan or the amount equal to the product of, (x) one minus the standard plan's actuarial value, as calculated under 45 CFR 156.135, and (y) the total allowed costs for EHB for the benefit year under each policy that was assigned to a plan variation for any portion of the benefit year.

(A) The standard plan has separate cost-sharing parameters for self-only coverage and other than self-only coverage, does not have separate cost-sharing parameters for pharmaceutical and medical services, and has an enrollment during the benefit year of fewer than 12,000 member months for coverage with total allowed costs for EHB for the benefit year that are greater than the effective deductible, but for which associated cost sharing for EHB is less than the annual limitation on cost sharing, in either of the following categories –

(1) Self-only coverage; or

(2) Other than self-only coverage.

(B) The standard plan has separate cost-sharing parameters for pharmaceutical and medical services, does not have separate cost-sharing parameters for self-only coverage and other than self-only coverage, and has an enrollment during the benefit year of fewer than 12,000 member months for coverage with total allowed costs for EHB for the benefit year that are greater than the effective deductible, but for which associated cost sharing for EHB is

less than the annual limitation on cost sharing, in either of the following categories:

(1) Coverage of medical services; or
(2) Coverage of pharmaceutical services.

(C) The standard plan has separate cost-sharing parameters for self-only coverage and other than self-only coverage and for pharmaceutical and medical services, and has an enrollment during the benefit year of fewer than 12,000 member months for coverage with total allowed costs for EHB for the benefit year that are greater than the effective deductible, but for which associated cost sharing for EHB is less than the annual limitation on cost sharing, in any of the following categories:

(1) Self-only coverage of medical services;

(2) Self-only coverage of pharmaceutical services;

(3) Other than self-only coverage of medical services; or

(4) Other than self-only coverage of pharmaceutical services.

(D) The standard plan does not have separate cost-sharing parameters for pharmaceutical and medical services, or for self-only coverage and other than self-only coverage, and has an enrollment during the benefit year of fewer than 12,000 member months with total allowed costs for EHB for the benefit year that are greater than the effective deductible, but for which associated cost sharing for EHB is less than the annual limitation on cost sharing.

(vi) Notwithstanding paragraphs (c)(4)(i)(A) and (B) of this section, and paragraphs (c)(4)(iii)(A) through (E) of this section, if more than eighty percent of the total allowed costs for EHB for the benefit year under a standard plan for a subgroup that requires a separate set of effective cost-sharing parameters pursuant to paragraph (c)(4)(ii) are not subject to a deductible, then:

(A) The average deductible, the effective non-deductible cost sharing, and the effective deductible for the subgroup equal zero;

(B) The effective pre-deductible coinsurance rate for the subgroup is equal to the effective post-deductible coinsurance rate for the subgroup, which is determined based on all standard plan policies for the applicable subgroup for which associated cost sharing for EHB is less than the annual limitation on cost sharing, and calculated for the applicable subgroup as the proportion of the total allowed costs for EHB under the standard plan for the benefit year incurred for standard plan enrollees and payable as

cost sharing (including cost sharing payable through a deductible); and

(C) The amount that enrollees in the applicable subgroup in plan variation policies with total allowed costs for EHB for the benefit year that are less than the effective claims ceiling would have paid under the standard plan must be calculated using the formula in paragraph (c)(4)(i)(A).

* * * * *

■ 37. Section 156.460 is amended by adding paragraph (c) to read as follows:

§ 156.460 Reduction of enrollee's share of premium to account for advance payments of the premium tax credit.

* * * * *

(c) *Refunds to enrollees for improper reduction of enrollee's share of premium to account for advance payments of the premium tax credit.* If a QHP issuer discovers that it did not reduce the portion of the premium charged to or for an enrollee for the applicable month(s) by the amount of the advance payment of the premium tax credit in accordance with paragraph (a)(1) of this section, the QHP issuer must notify the enrollee of the improper reduction within 45 calendar days of the QHP issuer's discovery of the improper reduction and refund any excess premium paid by or for the enrollee, as follows:

(1) Unless a refund is requested by or for the enrollee, the QHP issuer must, within 45 calendar days of discovery of the error, apply the excess premium paid by or for the enrollee to the enrollee's portion of the premium (or refund the amount directly). If any excess premium remains, the QHP issuer must apply the excess premium to the enrollee's portion of the premium for each subsequent month for the remainder of the period of enrollment or benefit year until the excess is fully applied (or refund the remaining amount directly). If any excess premium remains at the end of the period of enrollment or benefit year, the QHP issuer must refund any excess premium within 45 calendar days of the end of the period of enrollment or benefit year, whichever comes first.

(2) If a refund is requested by or for the enrollee, the refund must be provided within 45 calendar days of the date of the request.

■ 38. Section 156.480 is added to subpart E to read as follows:

§ 156.480 Oversight of the administration of the cost-sharing reductions and advance payments of the premium tax credit programs.

(a) *Maintenance of records.* An issuer that offers a QHP in the individual

market through a State Exchange must adhere to, and ensure that any relevant delegated entities and downstream entities adhere to, the standards set forth in § 156.705 concerning maintenance of documents and records, whether paper, electronic, or in other media, by issuers offering QHPs in a Federally-facilitated Exchange, in connection with cost-sharing reductions and advance payments of the premium tax credit.

(b) *Annual reporting requirements.* For each benefit year, an issuer that offers a QHP in the individual market through an Exchange must report to HHS, in the manner and timeframe required by HHS, summary statistics specified by HHS with respect to administration of cost-sharing reduction and advance payments of the premium tax credit programs, including any failure to adhere to the standards set forth under § 156.410(a) through (d), § 156.425(a) through (b), and § 156.460(a) through (c) of this Part.

(c) *Audits.* HHS or its designee may audit an issuer that offers a QHP in the individual market through an Exchange to assess compliance with the requirements of this subpart.

■ 39. Subpart H is added to read as follows:

Subpart H—Oversight and Financial Integrity Standards for Issuers of Qualified Health Plans in Federally-Facilitated Exchanges

Sec.

156.705 Maintenance of records for Federally-facilitated Exchange.

156.715 Investigations and compliance reviews in Federally-facilitated Exchanges.

Subpart H—Oversight and Financial Integrity Standards for Issuers of Qualified Health Plans in Federally-Facilitated Exchanges

§ 156.705 Maintenance of records for Federally-facilitated Exchanges.

(a) *General standard.* Issuers offering QHPs in a Federally-facilitated Exchange must maintain all documents and records (whether paper, electronic, or other media) and other evidence of accounting procedures and practices, necessary for HHS to do the following:

(1) Periodically audit financial records related to QHP issuers' participation in a Federally-facilitated Exchange, and evaluate the ability of QHP issuers to bear the risk of potential financial losses; and

(2) Conduct compliance reviews or otherwise monitor QHP issuers' compliance with all Exchange standards applicable to issuers offering QHPs in a

federally-facilitated Exchange as listed in this part.

(b) *Records.* The records described in paragraph (a) of this section include the sources listed in § 155.1210(b)(2), (3), and (5) of this subchapter.

(c) *Record retention timeframe.*

Issuers offering QHPs in a Federally-facilitated Exchange must maintain all records referenced in paragraph (a) of this section for 10 years.

(d) *Record availability.* Issuers offering QHPs in a Federally-facilitated Exchange must make all records in paragraph (a) of this section available to HHS, the OIG, the Comptroller General, or their designees, upon request.

§ 156.715 Compliance Reviews of QHP Issuers in Federally-facilitated Exchanges.

(a) *General standard.* Issuers offering QHPs in a Federally-facilitated Exchange may be subject to compliance reviews to ensure ongoing compliance with Exchange standards applicable to issuers offering QHPs in a Federally-facilitated Exchange.

(b) *Records.* In preparation for or in the course of the compliance review, a QHP issuer must make available for HHS to review the records of the QHP issuer that pertain to its activities within a Federally-facilitated Exchange. Such records may include, but are not limited to the following:

(1) The QHP issuer's books and contracts, including the QHP issuer's policy manuals and other QHP plan benefit information provided to the QHP issuer's enrollees;

(2) The QHP issuer's policies and procedures, protocols, standard operating procedures, or other similar manuals related to the QHP issuer's activities in a Federally-facilitated Exchange;

(3) Any other information reasonably necessary for HHS to—

(i) Evaluate the QHP issuer's compliance with QHP certification standards and other Exchange standards applicable to issuers offering QHPs in a Federally-facilitated Exchange;

(ii) Evaluate the QHP's performance, including its adherence to an effective compliance plan, within a Federally-facilitated Exchange;

(iii) Verify that the QHP issuer has performed the duties attested to as part of the QHP certification process; and

(iv) Assess the likelihood of fraud or abuse.

(c) *Interest of Qualified Individuals and Qualified Employers.* HHS's findings from the compliance reviews under this section may be in conjunction with other findings related to the QHP issuers' compliance with certification standards, used to confirm

that permitting the issuer's QHPs to be available through a Federally-facilitated Exchange is in the interest of the qualified individuals and qualified employers as provided under § 155.1000(c)(2) of this subchapter.

(d) *Onsite and desk reviews.* The QHP issuer will make available, for the purposes listed in paragraph (c) of this section, its premises, physical facilities and equipment (including computer and other electronic systems), for HHS to conduct a compliance review as provided under this section.

(1) A compliance review under this section will be carried out as an onsite or desk review based on the specific circumstances.

(2) Unless otherwise specified, nothing in this section is intended to preempt Federal laws and regulations related to information privacy and security.

(e) *Compliance review timeframe.* A QHP issuer may be subject to a compliance review up to 10 years from the last day of that plan benefit year, or 10 years from the last day that the QHP certification is effective if the QHP is no longer available through a Federally-facilitated Exchange; provided, however, that if the 10 year review period falls during an ongoing compliance review, the review period would be extended until the compliance review is completed.

■ 40. Subpart J is added to read as follows:

Subpart J—Administrative Review of QHP Issuer Sanctions in Federally-Facilitated Exchanges

Sec.

- 156.901 Definitions.
- 156.903 Scope of Administrative Law Judge's (ALJ) authority.
- 156.905 Filing of request for hearing.
- 156.907 Form and content of request for hearing.
- 156.909 Amendment of notice of assessment or decertification request for hearing.
- 156.911 Dismissal of request for hearing.
- 156.913 Settlement.
- 156.915 Intervention.
- 156.917 Issues to be heard and decided by ALJ.
- 156.919 Forms of hearing.
- 156.921 Appearance of counsel.
- 156.923 Communications with the ALJ.
- 156.925 Motions.
- 156.927 Form and service of submissions.
- 156.929 Computation of time and extensions of time.
- 156.929 Computation of time and extensions of time.
- 156.931 Acknowledgment of request for hearing.
- 156.935 Discovery.
- 156.937 Submission of briefs and proposed hearing exhibits.

- 156.939 Effect of submission of proposed hearing exhibits.
- 156.941 Prehearing conferences.
- 156.943 Standard of proof.
- 156.945 Evidence.
- 156.947 The record.
- 156.951 Posthearing briefs.
- 156.953 ALJ decision.
- 156.955 Sanctions.
- 156.957 Review by Administrator.
- 156.959 Judicial review.
- 156.961 Failure to pay assessment.
- 156.963 Final order not subject to review.

Subpart J—Administrative Review of QHP Issuer Sanctions in Federally-Facilitated Exchanges

§ 156.901 Definitions.

In this subpart, unless the context indicates otherwise:

ALJ means administrative law judge of the Departmental Appeals Board of HHS.

Filing date means the date postmarked by the U.S. Postal Service, deposited with a carrier for commercial delivery, or hand delivered.

Hearing includes a hearing on a written record as well as an in-person or telephone hearing.

Party means HHS or the respondent.

Receipt date means five days after the date of a document, unless there is a showing that it was in fact received later.

Respondent means an entity that received a notice of proposed assessment of a civil money penalty issued pursuant to § 156.805 or a notice of decertification pursuant to § 156.810(c) or (d).

§ 156.903 Scope of Administrative Law Judge's (ALJ) authority.

(a) The ALJ has the authority, including all of the authority conferred by the Administrative Procedure Act (5 U.S.C. 554a), to adopt whatever procedures may be necessary or proper to carry out in an efficient and effective manner the ALJ's duty to provide a fair and impartial hearing on the record and to issue an initial decision concerning the imposition of a civil money penalty or the decertification of a QHP offered in a Federally-facilitated Exchange.

(b) The ALJ's authority includes the authority to modify, consistent with the Administrative Procedures Act (5 U.S.C. 552a), any hearing procedures set out in this subpart.

(c) The ALJ does not have the authority to find invalid or refuse to follow Federal statutes or regulations.

§ 156.905 Filing of request for hearing.

(a) A respondent has a right to a hearing before an ALJ if it files a request for hearing that complies with § 156.907(a), within 30 days after the

date of issuance of either HHS' notice of proposed assessment under § 156.805, notice of decertification of a QHP under § 156.810(c) or § 156.810(d). The request for hearing should be addressed as instructed in the notice of proposed determination. "date of issuance" is five (5) days after the filing date, unless there is a showing that the document was received earlier.

(b) The ALJ may extend the time for filing a request for hearing only if the ALJ finds that the respondent was prevented by events or circumstances beyond its control from filing its request within the time specified above. Any request for an extension of time must be made promptly by written motion.

§ 156.907 Form and content of request for hearing.

(a) The request for hearing must do the following:

(1) Identify any factual or legal bases for the assessment or decertifications with which the respondent disagrees.

(2) Describe with reasonable specificity the basis for the disagreement, including any affirmative facts or legal arguments on which the respondent is relying.

(b) Identify the relevant notice of assessment or decertification by date and attach a copy of the notice.

§ 156.909 Amendment of notice of assessment or decertification request for hearing.

The ALJ may permit CMS to amend its notice of assessment or decertification, or permit the respondent to amend a request for hearing that complies with § 156.907(a), if the ALJ finds that no undue prejudice to either party will result.

§ 156.911 Dismissal of request for hearing.

An ALJ will order a request for hearing dismissed if the ALJ determines that:

(a) The request for hearing was not filed within 30 days as specified by § 156.905(a) or any extension of time granted by the ALJ pursuant to § 156.905(b).

(b) The request for hearing fails to meet the requirements of § 156.907.

(c) The entity that filed the request for hearing is not a respondent under § 156.901.

(d) The respondent has abandoned its request.

(e) The respondent withdraws its request for hearing.

§ 156.913 Settlement.

HHS has exclusive authority to settle any issue or any case, without the consent of the ALJ at any time before or after the ALJ's decision.

§ 156.915 Intervention.

(a) The ALJ may grant the request of an entity, other than the respondent, to intervene if all of the following occur:

(1) The entity has a significant interest relating to the subject matter of the case.

(2) Disposition of the case will, as a practical matter, likely impair or impede the entity's ability to protect that interest.

(3) The entity's interest is not adequately represented by the existing parties.

(4) The intervention will not unduly delay or prejudice the adjudication of the rights of the existing parties.

(b) A request for intervention must specify the grounds for intervention and the manner in which the entity seeks to participate in the proceedings. Any participation by an intervenor must be in the manner and by any deadline set by the ALJ.

(c) The Department of Labor (DOL) or the Internal Revenue Service (IRS) may intervene without regard to paragraphs (a)(1) through (3) of this section.

§ 156.917 Issues to be heard and decided by ALJ.

(a) The ALJ has the authority to hear and decide the following issues:

(1) Whether a basis exists to assess a civil money penalty against the respondent.

(2) Whether the amount of the assessed civil money penalty is reasonable.

(3) Whether a basis exists to decertify a QHP offered by the respondent in a Federally-facilitated Exchange.

(b) In deciding whether the amount of a civil money penalty is reasonable, the ALJ—

(1) Will apply the factors that are identified in § 156.805 for civil money penalties.

(2) May consider evidence of record relating to any factor that HHS did not apply in making its initial determination, so long as that factor is identified in this subpart.

(c) If the ALJ finds that a basis exists to assess a civil money penalty, the ALJ may sustain, reduce, or increase the penalty that HHS assessed.

§ 156.919 Forms of hearing.

(a) All hearings before an ALJ are on the record. The ALJ may receive argument or testimony in writing, in person, or by telephone. The ALJ may receive testimony by telephone only if the ALJ determines that doing so is in the interest of justice and economy and that no party will be unduly prejudiced. The ALJ may require submission of a witness' direct testimony in writing only if the witness is available for cross-examination.

(b) The ALJ may decide a case based solely on the written record where there is no disputed issue of material fact the resolution of which requires the receipt of oral testimony.

§ 156.921 Appearance of counsel.

Any attorney who is to appear on behalf of a party must promptly file, with the ALJ, a notice of appearance.

§ 156.923 Communications with the ALJ.

No party or person (except employees of the ALJ's office) may communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for both parties to participate. This provision does not prohibit a party or person from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 156.925 Motions.

(a) Any request to the ALJ for an order or ruling must be by motion, stating the relief sought, the authority relied upon, and the facts alleged. All motions must be in writing, with a copy served on the opposing party, except in either of the following situations:

(1) The motion is presented during an oral proceeding before an ALJ at which both parties have the opportunity to be present.

(2) An extension of time is being requested by agreement of the parties or with waiver of objections by the opposing party.

(b) Unless otherwise specified in this subpart, any response or opposition to a motion must be filed within 20 days of the party's receipt of the motion. The ALJ does not rule on a motion before the time for filing a response to the motion has expired except where the response is filed at an earlier date, where the opposing party consents to the motion being granted, or where the ALJ determines that the motion should be denied.

§ 156.927 Form and service of submissions.

(a) Every submission filed with the ALJ must be filed in triplicate, including one original of any signed documents, and include:

(1) A caption on the first page, setting forth the title of the case, the docket number (if known), and a description of the submission (such as "Motion for Discovery").

(2) The signatory's name, address, and telephone number.

(3) A signed certificate of service, specifying each address to which a copy of the submission is sent, the date on which it is sent, and the method of service.

(b) A party filing a submission with the ALJ must, at the time of filing, serve a copy of such submission on the opposing party. An intervenor filing a submission with the ALJ must, at the time of filing, serve a copy of the submission on all parties. Service must be made by mailing or hand delivering a copy of the submission to the opposing party. If a party is represented by an attorney, service must be made on the attorney.

§ 156.929 Computation of time and extensions of time.

(a) For purposes of this subpart, in computing any period of time, the time begins with the day following the act, event, or default and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day. When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government are excluded from the computation.

(b) The period of time for filing any responsive pleading or papers is determined by the date of receipt (as defined in § 156.901) of the submission to which a response is being made.

(c) The ALJ may grant extensions of the filing deadlines specified in these regulations or set by the ALJ for good cause shown (except that requests for extensions of time to file a request for hearing may be granted only on the grounds specified in § 156.905(b)).

§ 156.931 Acknowledgment of request for hearing.

After receipt of the request for hearing, the ALJ assigned to the case or someone acting on behalf of the ALJ will send a letter to the parties that acknowledges receipt of the request for hearing, identifies the docket number assigned to the case, provides instructions for filing submissions and other general information concerning procedures, and sets out the next steps in the case.

§ 156.935 Discovery.

(a) The parties must identify any need for discovery from the opposing party as soon as possible, but no later than the time for the reply specified in § 156.937(c). Upon request of a party, the ALJ may stay proceedings for a reasonable period pending completion of discovery if the ALJ determines that a party would not be able to make the submissions required by § 156.937 without discovery. The parties should attempt to resolve any discovery issues informally before seeking an order from the ALJ.

(b) Discovery devices may include requests for production of documents, requests for admission, interrogatories, depositions, and stipulations. The ALJ orders interrogatories or depositions only if these are the only means to develop the record adequately on an issue that the ALJ must resolve to decide the case.

(c) Each discovery request must be responded to within 30 days of receipt, unless that period of time is extended for good cause by the ALJ.

(d) A party to whom a discovery request is directed may object in writing for any of the following reasons:

(1) Compliance with the request is unduly burdensome or expensive.

(2) Compliance with the request will unduly delay the proceedings.

(3) The request seeks information that is wholly outside of any matter in dispute.

(4) The request seeks privileged information. Any party asserting a claim of privilege must sufficiently describe the information or document being withheld to show that the privilege applies. If an asserted privilege applies to only part of a document, a party withholding the entire document must state why the nonprivileged part is not segregable.

(5) The disclosure of information responsive to the discovery request is prohibited by law.

(e) Any motion to compel discovery must be filed within 10 days after receipt of objections to the party's discovery request, within 10 days after the time for response to the discovery request has elapsed if no response is received, or within 10 days after receipt of an incomplete response to the discovery request. The motion must be reasonably specific as to the information or document sought and must state its relevance to the issues in the case.

§ 156.937 Submission of briefs and proposed hearing exhibits.

(a) Within 60 days of its receipt of the acknowledgment provided for in § 156.931, the respondent must file the following with the ALJ:

(1) A statement of its arguments concerning CMS's notice of assessment or decertification (respondent's brief), including citations to the respondent's hearing exhibits provided in accordance with paragraph (a)(2) of this section. The brief may not address factual or legal bases for the assessment or decertification that the respondent did not identify as disputed in its request for hearing or in an amendment to that request permitted by the ALJ.

(2) All documents (including any affidavits) supporting its arguments,

tabbed and organized chronologically and accompanied by an indexed list identifying each document.

(3) A statement regarding whether there is a need for an in-person hearing and, if so, a list of proposed witnesses and a summary of their expected testimony that refers to any factual dispute to which the testimony will relate.

(4) Any stipulations or admissions.

(b) Within 30 days of its receipt of the respondent's submission required by paragraph (a) of this section, CMS will file the following with the ALJ:

(1) A statement responding to the respondent's brief, including the respondent's proposed hearing exhibits, if appropriate. The statement may include citations to CMS's proposed hearing exhibits submitted in accordance with paragraph (b)(2) of this section.

(2) Any documents supporting CMS's response not already submitted as part of the respondent's proposed hearing exhibits, organized and indexed as indicated in paragraph (a)(2) of this section (CMS's proposed hearing exhibits).

(3) A statement regarding whether there is a need for an in-person hearing and, if so, a list of proposed witnesses and a summary of their expected testimony that refers to any factual dispute to which the testimony will relate.

(4) Any admissions or stipulations.

(c) Within 15 days of its receipt of CMS's submission required by paragraph (b) of this section, the respondent may file with the ALJ a reply to CMS's submission.

§ 156.939 Effect of submission of proposed hearing exhibits.

(a) Any proposed hearing exhibit submitted by a party in accordance with § 156.937 is deemed part of the record unless the opposing party raises an objection to that exhibit and the ALJ rules to exclude it from the record. An objection must be raised either in writing prior to the prehearing conference provided for in § 156.941 or at the prehearing conference. The ALJ may require a party to submit the original hearing exhibit on his or her own motion or in response to a challenge to the authenticity of a proposed hearing exhibit.

(b) A party may introduce a proposed hearing exhibit following the times for submission specified in § 156.937 only if the party establishes to the satisfaction of the ALJ that it could not have produced the exhibit earlier and that the opposing party will not be prejudiced.

§ 156.941 Prehearing conferences.

An ALJ may schedule one or more prehearing conferences (generally conducted by telephone) on the ALJ's own motion or at the request of either party for the purpose of any of the following:

(a) Hearing argument on any outstanding discovery request.

(b) Establishing a schedule for any supplements to the submissions required by § 156.937 because of information obtained through discovery.

(c) Hearing argument on a motion.

(d) Discussing whether the parties can agree to submission of the case on a stipulated record.

(e) Establishing a schedule for an in-person hearing, including setting deadlines for the submission of written direct testimony or for the written reports of experts.

(f) Discussing whether the issues for a hearing can be simplified or narrowed.

(g) Discussing potential settlement of the case.

(h) Discussing any other procedural or substantive issues.

§ 156.943 Standard of proof.

(a) In all cases before an ALJ—

(1) CMS has the burden of coming forward with evidence sufficient to establish a prima facie case;

(2) The respondent has the burden of coming forward with evidence in response, once CMS has established a prima facie case; and

(3) CMS has the burden of persuasion regarding facts material to the assessment or decertification; and

(4) The respondent has the burden of persuasion regarding facts relating to an affirmative defense.

(b) The preponderance of the evidence standard applies to all cases before the ALJ.

§ 156.945 Evidence.

(a) The ALJ will determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ will not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate; for example, to exclude unreliable evidence.

(c) The ALJ excludes irrelevant or immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence is excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement made in this action will be inadmissible to the extent provided in the Federal Rules of Evidence.

(g) Evidence of acts other than those at issue in the instant case is admissible in determining the amount of any civil money penalty if those acts are used under § 156.805 of this part to consider the entity's prior record of compliance, or to show motive, opportunity, intent, knowledge, preparation, identity, or lack of mistake. This evidence is admissible regardless of whether the acts occurred during the statute of limitations period applicable to the acts that constitute the basis for liability in the case and regardless of whether HHS' notice sent in accordance with § 156.805 referred to them.

(h) The ALJ will permit the parties to introduce rebuttal witnesses and evidence.

(i) All documents and other evidence offered or taken for the record will be open to examination by all parties, unless the ALJ orders otherwise for good cause shown.

(j) The ALJ may not consider evidence regarding the willingness and ability to enter into and successfully complete a corrective action plan when that evidence pertains to matters occurring after HHS' notice under § 156.805(d) or § 156.810(c) or § 156.810(d).

§ 156.947 The record.

(a) Any testimony that is taken in-person or by telephone is recorded and transcribed. The ALJ may order that other proceedings in a case, such as a prehearing conference or oral argument of a motion, be recorded and transcribed.

(b) The transcript of any testimony, exhibits and other evidence that is admitted, and all pleadings and other documents that are filed in the case constitute the record for purposes of an ALJ decision.

(c) For good cause, the ALJ may order appropriate redactions made to the record.

§ 156.951 Posthearing briefs.

Each party is entitled to file proposed findings and conclusions, and supporting reasons, in a posthearing brief. The ALJ will establish the schedule by which such briefs must be filed. The ALJ may direct the parties to brief specific questions in a case and may impose page limits on posthearing briefs. Additionally, the ALJ may allow the parties to file posthearing reply briefs.

§ 156.953 ALJ decision.

The ALJ will issue an initial agency decision based only on the record and on applicable law; the decision will contain findings of fact and conclusions of law. The ALJ's decision is final and appealable after 30 days unless it is modified or vacated under § 156.957.

§ 156.955 Sanctions.

(a) The ALJ may sanction a party or an attorney for failing to comply with an order or other directive or with a requirement of a regulation, for abandonment of a case, or for other actions that interfere with the speedy, orderly or fair conduct of the hearing. Any sanction that is imposed will relate reasonably to the severity and nature of the failure or action.

(b) A sanction may include any of the following actions:

(1) In the case of failure or refusal to provide or permit discovery, drawing negative fact inferences or treating such failure or refusal as an admission by deeming the matter, or certain facts, to be established.

(2) Prohibiting a party from introducing certain evidence or otherwise advocating a particular claim or defense.

(3) Striking pleadings, in whole or in part.

(4) Staying the case.

(5) Dismissing the case.

(6) Entering a decision by default.

(7) Refusing to consider any motion or other document that is not filed in a timely manner.

(8) Taking other appropriate action.

§ 156.957 Review by Administrator.

(a) The Administrator of CMS (which for purposes of this section may include his or her delegate), at his or her discretion, may review in whole or in part any initial agency decision issued under § 156.953.

(b) The Administrator may decide to review an initial agency decision if it appears from a preliminary review of the decision (or from a preliminary review of the record on which the initial agency decision was based, if available at the time) that:

(1) The ALJ made an erroneous interpretation of law or regulation.

(2) The initial agency decision is not supported by substantial evidence.

(3) The ALJ has incorrectly assumed or denied jurisdiction or extended his or her authority to a degree not provided for by statute or regulation.

(4) The ALJ decision requires clarification, amplification, or an alternative legal basis for the decision.

(5) The ALJ decision otherwise requires modification, reversal, or remand.

(c) Within 30 days of the date of the initial agency decision, the Administrator will mail a notice advising the respondent of any intent to review the decision in whole or in part.

(d) Within 30 days of receipt of a notice that the Administrator intends to review an initial agency decision, the respondent may submit, in writing, to the Administrator any arguments in support of, or exceptions to, the initial agency decision.

(e) This submission of the information indicated in paragraph (d) of this section must be limited to issues the Administrator has identified in his or her notice of intent to review, if the Administrator has given notice of an intent to review the initial agency decision only in part. A copy of this submission must be sent to the other party.

(f) After receipt of any submissions made pursuant to paragraph (d) of this section and any additional submissions for which the Administrator may provide, the Administrator will affirm, reverse, modify, or remand the initial agency decision. The Administrator will mail a copy of his or her decision to the respondent.

(g) The Administrator's decision will be based on the record on which the initial agency decision was based (as forwarded by the ALJ to the Administrator) and any materials submitted pursuant to paragraphs (b), (d), and (f) of this section.

(h) The Administrator's decision may rely on decisions of any courts and other applicable law, whether or not cited in the initial agency decision.

§ 156.959 Judicial review.

(a) *Filing of an action for review.* Any responsible entity against whom a final order imposing a civil money penalty or decertification of a QHP is entered may obtain review in the United States District Court for any district in which the entity is located or in the United States District Court for the District of Columbia by doing the following:

(1) Filing a notice of appeal in that court within 30 days from the date of a final order.

(2) Simultaneously sending a copy of the notice of appeal by registered mail to HHS.

(b) *Certification of administrative record.* HHS promptly certifies and files with the court the record upon which the penalty was assessed.

(c) *Standard of review.* The findings of HHS and the ALJ may not be set aside unless they are found to be unsupported by substantial evidence, as provided by 5 U.S.C. 706(2)(E).

§ 156.961 Failure to pay assessment.

If any entity fails to pay an assessment after it becomes a final order, or after the court has entered final judgment in favor of CMS, CMS refers the matter to the Attorney General, who brings an action against the entity in the appropriate United States district court to recover the amount assessed.

§ 156.963 Final order not subject to review.

In an action brought under § 156.961, the validity and appropriateness of the final order imposing a civil money penalty is not subject to review.

■ 41. Subpart L is added to read as follows:

Subpart L—Quality Standards**§ 156.1105 Establishment of standards for HHS-approved enrollee satisfaction survey vendors for use by QHP issuers in Exchanges.**

(a) *Application for approval.* An enrollee satisfaction survey vendor must be approved by HHS, in a form and manner to be determined by HHS, to administer, on behalf of a QHP issuer, enrollee satisfaction surveys to QHP enrollees. HHS will approve enrollee satisfaction survey vendors on an annual basis, and each enrollee satisfaction survey vendor must submit an application for each year that approval is sought.

(b) *Standards.* To be approved by HHS, an enrollee satisfaction survey vendor must meet each of the following standards:

(1) Sign and submit an application form for approval in accordance with paragraph (a) of this section;

(2) Ensure, on an annual basis, that appropriate staff participate in enrollee satisfaction survey vendor training and successfully complete a post-training certification exercise as established by HHS;

(3) Ensure the accuracy of their data collection, calculation and submission processes and attest to HHS the veracity of the data and these processes;

(4) Sign and execute a standard HHS data use agreement, in a form and manner to be determined by HHS, that establishes protocols related to the disclosure, use, and reuse of HHS data;

(5) Adhere to the enrollee satisfaction survey protocols and technical specifications in a manner and form required by HHS;

(6) Develop and submit to HHS a quality assurance plan and any supporting documentation as determined to be relevant by HHS. The plan must describe in adequate detail the implementation of and compliance with all required protocols and technical specifications described in paragraph (b)(5) of this section;

(7) Adhere to privacy and security standards established and implemented under § 155.260 of this subchapter by the Exchange with which they are associated;

(8) Comply with all applicable State and Federal laws;

(9) Become a registered user of the enrollee satisfaction survey data warehouse to submit files to HHS on behalf of its authorized QHP contracts;

(10) Participate in and cooperate with HHS oversight for quality-related activities, including, but not limited to: review of the enrollee satisfaction survey vendor's quality assurance plan and other supporting documentation; analysis of the vendor's submitted data and sampling procedures; and site visits and conference calls; and,

(11) Comply with minimum business criteria as established by HHS.

(c) *Approved list.* A list of approved enrollee satisfaction survey vendors will be published on an HHS Web site.

■ 42. Section 156.1210 is added to subpart M to read as follows:

§ 156.1210 Confirmation of HHS payment and collections reports.

(a) *Responses to reports.* Within 15 calendar days of the date of a payment and collections report from HHS, the issuer must, in a format specified by HHS, either:

(1) Confirm to HHS that the amounts identified in the payment and collections report for the timeframe specified in the report accurately reflect applicable payments owed by the issuer to the Federal government and the payments owed to the issuer by the Federal government; or

(2) Describe to HHS any inaccuracy it identifies in the payment and collections report.

(b) *Late discovery of a discrepancy.* If an issuer reports a discrepancy in a payment and collections report later than 15 calendar days after the date of the report, HHS will work with the issuer to resolve the discrepancy as long as the late reporting was not due to misconduct on the part of the issuer.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 27, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Dated: Approved: October 18, 2013

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–25326 Filed 10–24–13; 4:15 pm]

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Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 22 and 172

Federal Reserve System

12 CFR Part 208

Federal Deposit Insurance Corporation

12 CFR Parts 339 and 391

Farm Credit Administration

12 CFR Part 614

National Credit Union Administration

12 CFR Part 760

Loans in Areas Having Special Flood Hazards; Proposed Rule

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Parts 22, 172**

[Docket ID OCC–2013–0015]

RIN 1557–AD67

FEDERAL RESERVE SYSTEM**12 CFR Part 208**

[Regulation H, Docket No. R–1462]

RIN 7100 AE–00

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Parts 339, 391**

RIN 3064–AE03

FARM CREDIT ADMINISTRATION**12 CFR Part 614**

RIN 3052–AC93

NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Part 760**

RIN 3133–AE18

Loans in Areas Having Special Flood Hazards

AGENCY: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; National Credit Union Administration.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) (collectively, the Agencies) are proposing to amend their regulations regarding loans in areas having special flood hazards to implement provisions of the Biggert-Waters Flood Insurance Reform Act of 2012. Specifically, the proposal would establish requirements with respect to the escrow of flood insurance payments, the acceptance of private flood insurance coverage, and the force-placement of flood insurance. The proposal also would clarify the Agencies' flood insurance regulations with respect to other amendments made by the Act and make technical

corrections. Furthermore, the OCC and the FDIC are proposing to integrate their flood insurance regulations for national banks and Federal savings associations and for State non-member banks and State savings associations, respectively.

DATES: Comments must be received on or before December 10, 2013, except that comments on the Paperwork Reduction Act analysis in part V of the **SUPPLEMENTARY INFORMATION** must be received on or before December 30, 2013.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title “Loans in Areas Having Special Flood Hazards” to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title “Loans in Areas Having Special Flood Hazards” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal*—“regulations.gov”: Go to <http://www.regulations.gov>. Enter “Docket ID OCC–2013–0015” in the Search Box and click “Search.” Results can be filtered using the filtering tools on the left side of the screen. Click on “Comment Now” to submit public comments. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- *Email:* regs.comments@occ.treas.gov.

- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

- *Fax:* (571) 465–4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC–2013–0015” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including

attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>. Enter “Docket ID OCC–2013–0015” in the Search box and click “Search.” Comments can be filtered by Agency using the filtering tools on the left side of the screen. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1462 or RIN 7100 AE–00, by any of the following methods:

- *Agency Web site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.

- *Fax:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as

submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Agency Web site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- **Hand Delivered/Courier:** The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

- **Email:** comments@FDIC.gov.

Comments submitted must include "FDIC" and "Loans in Areas Having Special Flood Hazards." Comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided.

FCA: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- **Email:** Send us an email at reg-comm@fca.gov.

- **Agency Web site:** <http://www.fca.gov>. Select "Law & Regulations," then "FCA Regulations," then "Public Comments," and follow the directions for "Submitting a Comment."

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at <http://www.fca.gov>. Once you are in the

Web site, Select "Law & Regulations," then "FCA Regulations," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

NCUA: You may submit comments, identified by RIN 3133-AE18 by any of the following methods (Please send comments by one method only):

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Agency Web site:** <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.

- **Email:** Address to regcomments@ncua.gov. Include [Your name] Comments on "Loans in Areas Having Special Flood Hazards" in the email subject line.

- **Fax:** (703) 518-6319. Use the subject line described above for email.

- **Mail:** Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- **Hand Delivery/Courier:** Same as mail address.

You can view all public comments on NCUA's Web site at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an email to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT:

OCC: Rhonda L. Daniels, Compliance Specialist, Compliance Policy Division, (202) 649-5405; Margaret C. Hesse, Senior Counsel, Community and Consumer Law Division, (202) 649-6350, or Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 649-5490, Office of the Chief Counsel.

Board: Lanette Meister, Senior Supervisory Consumer Financial

Services Analyst (202) 452-2705; Vivian W. Wong, Counsel (202) 452-3667, Division of Consumer and Community Affairs; or Daniel Ericson, Counsel (202) 452-3359, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

FDIC: Navid Choudhury, Senior Attorney, Consumer Compliance Section (202) 898-6526, Legal Division; or John Jackwood, Senior Policy Analyst (202) 898-3991, Division of Depositor and Consumer Protection.

FCA: Paul K. Gibbs, Senior Accountant, Office of Regulatory Policy (703) 883-4203, TTY (703) 883-4056; or Mary Alice Donner, Senior Counsel, Office of General Counsel (703) 883-4020, TTY (703) 883-4056.

NCUA: Sarah Chung, Staff Attorney, (703) 518-1178, Office of General Counsel.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The Biggert-Waters Flood Insurance Reform Act of 2012¹ (the Act), signed into law by the President on July 6, 2012, significantly revised Federal flood insurance statutes. Section 100209 of the Act, relating to the escrow of flood insurance payments, and section 100239 of the Act, relating to the acceptance of private flood insurance coverage, amended provisions of the Flood Disaster Protection Act (FDPA)² that require the Agencies to issue implementing regulations. Section 100244 of the Act, relating to force-placed insurance, necessitates conforming revisions to the Agencies' current flood insurance regulations. The Agencies jointly are issuing this proposal to revise their regulations accordingly. In connection with the issuance of this proposal, the Agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as is required by certain provisions of the flood insurance statutes.³ The Agencies' proposal would implement only certain provisions of the Act over which the Agencies have jurisdiction. Accordingly, the Agencies encourage lenders to consult the Act for further information about revisions to the flood insurance statutes that will not be implemented through this rulemaking.

¹ Public Law 112-141, 126 Stat. 916 (2012).

² Public Law 93-234, 87 Stat. 975 (1973).

³ See 42 U.S.C. 4012a(b)(1). The heads of four of the five Agencies (OCC, Board, FDIC, and NCUA) comprise part of the membership of the FFIEC.

B. Flood Insurance Statutes

The National Flood Insurance Act of 1968 (1968 Act)⁴ and the FDPA govern the National Flood Insurance Program (NFIP).⁵ The 1968 Act made Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas if the community where the improved real estate or mobile home is located participates in the NFIP. A special flood hazard area (SFHA) is an area within a floodplain having a one percent or greater chance of flood occurrence in any given year.⁶ SFHAs are delineated on maps issued by FEMA for individual communities.⁷ A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage.⁸

Until the adoption of the FDPA in 1973, the purchase of flood insurance was voluntary. The FDPA required the mandatory purchase of flood insurance and directed the OCC, Board, FDIC, NCUA, and the former Office of Thrift Supervision (OTS)⁹ to issue regulations governing the lending institutions that they supervised. The resulting regulations directed these lending institutions to require flood insurance on improved real estate or mobile homes serving as collateral for a loan (secured property) if the secured property was located in a SFHA in a participating community. The regulations also required lenders to notify borrowers that the secured property is located in a SFHA and that Federal disaster assistance is available with respect to the property in the event of a flood.

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, also known as the National Flood Insurance Reform Act of 1994 (Reform Act),

comprehensively amended the Federal flood insurance statutes.¹⁰ The Reform Act established new requirements on Federally regulated lending institutions, such as the escrow for flood insurance premiums under certain conditions and mandatory force-placement of flood insurance coverage. The Reform Act was intended to increase compliance with the mandatory flood insurance purchase requirements and participation in the NFIP in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal government, taxpayers, and flood victims. In addition, the Reform Act broadened the definition of “Federal entity for lending regulation” to include the FCA, thereby increasing the number of regulated lending institutions subject to the mandatory flood insurance purchase requirement to include lenders regulated by the FCA.

The Reform Act required the Agencies to revise their flood insurance regulations and required the FCA to promulgate flood insurance regulations for the first time. The Agencies fulfilled these requirements by issuing a joint final rule in August 1996.¹¹

C. The Biggert-Waters Act Amendments

Among other changes,¹² the Act significantly amends the NFIP requirements, over which the Agencies have jurisdiction. Specifically, the Act: (i) Increases the maximum civil money penalty (CMP) that the Agencies may impose per violation when there is a pattern or practice of flood violations and eliminates the limit on the total amount of penalties that the Agencies may assess against a regulated lending institution during any calendar year;¹³ (ii) requires regulated lending institutions to escrow premiums and

fees for flood insurance on residential improved real estate, unless the regulated lending institution meets the statutory small institution exception;¹⁴ (iii) directs regulated lending institutions to accept private flood insurance, as defined by the Act, and to notify borrowers of the availability of private flood insurance;¹⁵ and (iv) amends the force-placement requirement to clarify that regulated lending institutions may charge a borrower for the cost of premiums and fees incurred for coverage beginning on the date on which the flood insurance coverage lapsed or did not provide sufficient coverage and to prescribe the procedures for terminating force-placed insurance.¹⁶

The civil money penalty provisions,¹⁷ and the force-placement requirements were effective upon enactment. In contrast, both the escrow and private flood insurance provisions will become effective when the Agencies finalize implementing regulations. The Agencies previously published guidance regarding the effective dates of these amendments.¹⁸

II. Summary of the Proposal

As indicated above, the Agencies propose to revise their respective flood insurance regulations to implement the Act’s amendments addressing the escrow of flood insurance payments, private flood insurance, and force-placed insurance. These provisions, and other amendments, proposed by this rulemaking are summarized below and more specifically described in IV. Section-by-Section Analysis of this preamble. Although the Agencies’ proposals are substantively consistent, the format of the regulatory text varies

¹⁰ Public Law 103–325, 108 Stat. 2255 (1994) (codified as amended at 42 U.S.C. 4001 *et seq.* (1994)).

¹¹ 61 FR 45684 (Aug. 29, 1996).

¹² The Agencies note, for example, that section 100222 of the Act mandates a revision to the Special Information Booklet required under section 5 of the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2604(b)) to include a notice to the borrower of the availability of flood insurance under the NFIP or from a private insurance company, whether or not the real estate is located in an area having special flood hazards. The requirement to revise the Special Information Booklet is the responsibility of the Bureau of Consumer Financial Protection (CFPB) under RESPA. In addition, section 100204 of the Act directs the Administrator of FEMA to make flood insurance available to cover residential properties of five or more residences. The maximum coverage made available to such residential properties will be equal to the coverage made available to commercial properties. Policies for such properties will be made available by FEMA at a later date.

¹³ Section 100208 of the Act, amending section 102(f)(5) of the FDPA (42 U.S.C. 4012a(f)(5)).

¹⁴ Section 100209 of the Act, amending section 102(d) of the FDPA (42 U.S.C. 4012a(d)). Congress further amended section 42 U.S.C. 4012a(d) subsequent to the enactment of the Act to clarify that the flood insurance escrow requirement applies only to loans secured by residential improved real estate. *See* Public Law 112–281, 125 Stat. 2485 (Jan. 14, 2013).

¹⁵ Section 100239 of the Act, amending section 102(b) of the FDPA (42 U.S.C. 4012a(b)) and section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)).

¹⁶ Section 100244 of the Act, amending section 102(e) of the FDPA (42 U.S.C. 4012a(e)).

¹⁷ Some of the Agencies have revised their regulations to incorporate these increased civil money penalties. *See* OCC: 77 FR 66529 (Nov. 11, 2012) and 77 FR 76354 (Dec. 28, 2012); Board: 77 FR 68680 (Nov. 16, 2012); FDIC: 77 FR 74573 (Dec. 17, 2012); and FCA: 78 FR 24336 (April 25, 2013). The NCUA is in the process of updating its rule to reflect this civil money penalty change.

¹⁸ “Interagency Statement on the Impact of Biggert-Waters Act,” March 29, 2013 (Board: CA 13–2; OCC: Bulletin 2013–10; FDIC: FIL 14–2013; FCA: Information Memorandum, March 29, 2013; NCUA: 13–RA–03).

⁴ Public Law 90–448, 82 Stat. 572 (1968).

⁵ These statutes are codified at 42 U.S.C. 4001–4129. The Federal Emergency Management Agency (FEMA) administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59–77.

⁶ 44 CFR 59.1.

⁷ 44 CFR part 65.

⁸ 44 CFR part 60.

⁹ Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), (Dodd-Frank Act), transferred the powers, duties, and functions formerly performed by the OTS among the FDIC, as to State savings associations, the OCC, as to Federal savings associations, and the Board as to savings and loan holding companies. The OTS was abolished 90 days after the transfer date.

to conform to each Agency's current regulation.

First, the Agencies' proposal generally would require regulated lending institutions, or servicers acting on their behalf, to escrow premiums and fees for flood insurance for any loans secured by residential improved real estate or a mobile home, unless the institutions qualify for the statutory exception. Except as may be required under applicable State law, a regulated lending institution is not required to escrow if it has total assets of less than \$1 billion and, as of the Act's date of enactment, July 6, 2012, was not required by Federal or State law to escrow taxes or insurance for the term of the loan and did not have a policy to require escrow of taxes and insurance. The Agencies are proposing to implement the exception substantially as set forth in the statute.

Second, consistent with the Act, the Agencies' proposal would require that regulated lending institutions accept private flood insurance that meets the statutory definition to satisfy the mandatory purchase requirement. The proposal also specifically requests comment on whether the Agencies should use their authority under the FDPA to include a provision in the final rules that expressly permits regulated lending institutions to accept a flood insurance policy issued by a private insurer that does not meet the Act's definition of "private flood insurance" to satisfy the FDPA's general mandatory purchase requirement. The Agencies are also soliciting comment on what criteria the Agencies might require for such a policy. Alternatively, the Agencies solicit comment on whether it is appropriate to include a provision in the final rules that specifically requires regulated lending institutions to accept only policies issued by private insurers that meet the statutory definition, and if included, what would be the effect of such a provision on the availability of privately issued flood insurance.

Third, the Agencies' proposal includes new and revised sample notice forms and clauses. Specifically, the proposal amends the current Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, set forth as Appendix A in the Agencies' respective regulations, to add language concerning the availability of private flood insurance coverage (pursuant to the notice requirements under section 100239 of the Act) and the escrow requirement. The proposal also adds an additional sample notice form, Notice of Requirement to Escrow for Outstanding Loans, as Appendix B to assist

institutions in complying with the proposal's requirement to inform existing borrowers about the new escrow requirement. An institution would provide this notice for existing loans when neither the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance nor the notice of force-placement is provided. Finally, as Appendix C, the Agencies are proposing a sample clause regarding the new escrow requirement that may be included with the force-placement notice.

Fourth, the proposal would amend the force-placement of flood insurance provisions to clarify that a lender or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient. The proposal also would stipulate the circumstances under which a lender or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower. It also sets forth the documentary evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.

Fifth, the Agencies propose needed technical corrections. For example, the Agencies' current flood insurance regulations refer to the "Director" of the FEMA. The correct title for the head of that agency is "Administrator."¹⁹ The Agencies' proposal would correct all references to the head of FEMA.

Finally, the OCC and the FDIC propose to integrate their flood insurance regulations for national banks and Federal savings associations and for State non-member banks and State savings associations, respectively. Specifically, the OCC proposes to add language to its flood insurance regulation for national banks, 12 CFR part 22, to make it applicable to both national banks and Federal savings associations, and to remove its regulation for Federal savings associations, 12 CFR part 172. Similarly, the FDIC proposes to add language to 12 CFR part 339, its flood regulation for State non-member banks, to make it applicable to both State non-member banks and State savings associations and to remove its flood regulation for State savings associations, 12 CFR part 391 subpart D. Parts 22, 172, 339, and 391 subpart D, are nearly identical and contain no substantive differences, as they were originally adopted through an interagency rulemaking process.²⁰

¹⁹ 6 U.S.C. 313.

²⁰ The OCC republished the former OTS rule as an OCC rule with respect to Federal savings

III. Legal Authority

Section 102(b) of the FDPA (42 U.S.C. 4012a(b)), as amended by the Act, provides that the Agencies (after consultation and coordination with the FFIEC) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator of FEMA as an area having special flood hazards and in which flood insurance has been made available under the NFIP, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance. Thus, section 102(b) of the FDPA grants the Agencies rulemaking authority to implement this mandatory flood insurance purchase requirement as it pertains to regulated lending institutions.

Furthermore, under section 102(b) of the FDPA, as amended by section 100239 of the Act, the Agencies (after consultation and coordination with the FFIEC) must by regulation direct regulated lending institutions to accept private flood insurance as satisfaction of the mandatory flood insurance purchase requirement, described above. Section 102(b) of the FDPA, as amended by section 100239 of the Act, also authorizes the Agencies to implement the definition of private flood insurance under section 102(b) of the FDPA, as amended by the Act, as well as the requirement that the lender disclose to the borrower the availability of flood insurance from private insurance companies.

The OCC, Board, and FDIC have general authority to issue regulations assuring the safety and soundness of depository institutions.²¹ The NCUA and FCA have similar authority with respect to the institutions that they supervise.²² In addition, section

associations and the FDIC republished the former OTS rule with respect to State savings associations in 2011, with only nomenclature changes. See 76 FR 49140 (Aug. 9, 2011) (OCC) and 76 FR 47811 (Aug. 5, 2011) (FDIC).

²¹ See 12 U.S.C. 1 and 93a; 12 U.S.C. 321 (granting the Board authority to impose conditions for membership in the Federal Reserve System); 12 U.S.C. 1820(g) (granting the FDIC authority to prescribe regulations to carry out the FDI Act; See also section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1)).

²² The Federal Credit Union Act (12 U.S.C. 1751 et seq.) and section 5.17 of the Farm Credit Act of 1971, as amended, (12 U.S.C. 2252). Sections 106, 201, and 206 of the Federal Credit Union Act (12 U.S.C. 1756, 1781, and 1786) provide NCUA with the authority to examine and supervise Federally insured credit unions to protect the credit union system and the safety and soundness of the National Credit Union Share Insurance Fund.

100239(a)(1), which amended section 102(b) of the FDPA, provides that nothing in that subsection shall be construed to supersede or limit the Agencies' authority to establish requirements relating to the financial solvency, strength, or claims-paying ability of private insurance companies from which a regulated lending institution will accept private flood insurance.

Finally, section 102(d) of the FDPA (42 U.S.C. 4012a(d)), as amended by section 100209 of the Act and Public Law No. 112–281,²³ states that the Agencies (after consultation and coordination with the FFIEC) must by regulation require all premiums and fees for flood insurance under the 1968 Act for residential improved real estate or a mobile home be paid to the regulated lending institution or servicer for any loan secured by the improved real estate or mobile home with the same frequency as payments on the loan are made for the duration of the loan. The statute requires that such funds be deposited in an escrow account on behalf of the borrower and used to pay the flood insurance provider when premiums are due. Section 102(d) of the FDPA, as amended, also authorizes the Agencies to implement the exception to this requirement for certain regulated lending institutions with assets less than \$1 billion.

IV. Section-by-Section Analysis

_____. *Authority, purpose, and scope*

Since the Agencies last revised their regulations in 1996, the title of the head of FEMA has changed from “Director” to “Administrator.” In accordance with this change, the Agencies are proposing an amendment to the reference to the head of FEMA in the scope section.

As part of the OCC's and FDIC's consolidation of their flood insurance rules, the OCC and FDIC also are proposing to insert the term “Federal savings association” or “FDIC-supervised institution” where necessary throughout their flood insurance rules.

_____. *Definitions*

Private flood insurance. The Agencies are proposing to add a new definition for “private flood insurance” consistent with section 100239 of the Act, which added a new section 102(b)(7) to the FDPA. Under section 102(b)(7) of the FDPA, “private flood insurance” means an insurance policy that: (i) Is issued by an insurance company that is licensed, admitted or otherwise approved to engage in the business of insurance in

the State or jurisdiction in which the insured building is located by the insurance regulator of the State or jurisdiction or, in the case of a policy of difference in condition, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction;²⁴ (ii) provides flood coverage at least as broad as the coverage provided by a standard flood insurance policy (SFIP) under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer; (iii) includes a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution; (iv) includes information about the availability of flood insurance coverage under the NFIP; (v) includes a mortgage interest clause similar to the clause contained in an SFIP; (vi) includes a provision requiring an insured to file suit not later than one year after the date of a written denial for all or part of a claim under a policy; and (vii) contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

Other definitions. The Agencies also are proposing technical amendments to change the references to the head of FEMA from Director to Administrator in the definitions and to renumber the definitions to accommodate the inclusion of the new definition for “private flood insurance.”

OCC-only definitions. The OCC also proposes the following amendments to the definition section for purposes of integrating its national bank and Federal savings association flood insurance rules. First, the proposed rule provides that the term “Federal savings association” means a Federal savings association as defined in 12 U.S.C. 1813(b)(2) and any service corporations thereof. This definition is identical to the definition of “Federal savings association” in 12 CFR part 172, except that part 172 specifically referenced “subsidiaries.” Current 12 CFR part 22 does not specifically include a reference to bank operating subsidiaries because

such subsidiaries are subject to the rules applicable to the operations of their parent bank pursuant to 12 CFR 5.34. Because Federal savings association operating subsidiaries also are subject to the same rules applicable to the parent savings association, as provided by 12 CFR 159.3(h), the inclusion of “subsidiary” in this definition is unnecessary and its removal will not affect the applicability of 12 CFR part 22 to Federal savings association operating subsidiaries.

Second, the OCC proposes to remove the definition of “bank,” which the rule currently defines as meaning a national bank. Instead, the term “bank” is replaced with “national bank” throughout the rule.

FDIC-only definition. The FDIC also proposes the following amendments to the definitional section for purposes of integrating its State nonmember bank and State savings association flood insurance rules. The FDIC proposes to remove the definition of “bank” and replace it with “FDIC-supervised institution” which would be defined to mean any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(g) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(g).

_____. *Requirement to purchase flood insurance where available.*

In General.

The current regulation provides that a regulated lending institution shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. This provision further provides that flood insurance coverage is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located. A “designated loan” means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the 1968 Act, as amended.²⁵ The Agencies are proposing to revise the language relating to the coverage limit to reflect more accurately what is actually covered under Federal flood insurance statutes. Specifically, the Agencies are proposing that the language be amended to state that flood insurance coverage is limited to the building or mobile home

²⁴ The Agencies note that with respect to alien (non-U.S.) surplus lines insurers, States may not prohibit a surplus lines broker from placing non-admitted insurance with, or procuring non-admitted insurance from, a non-U.S., non-admitted insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the National Association of Insurance Commissioners' (NAIC) International Insurer's Department (IID List). See The Nonadmitted and Reinsurance Reform Act of (NRRRA), Title V of the Dodd-Frank Act, Public Law 111–203 (July 21, 2011).

²⁵ OCC: 12 CFR 22.2(e); Board: 12 CFR 208.25(b)(4); FDIC: 12 CFR 339.2(e); FCA: 12 CFR 614.4925(e); NCUA: 12 CFR 760.2(f).

²³ 126 Stat. 2485 (Jan. 14, 2013).

and any personal property securing the loan and not the land itself.

Private flood insurance

The Agencies also are proposing to amend this section to implement section 102(b)(1)(B) of the FDPA, as added by section 100239(a)(1) of the Act, which requires that all regulated lending institutions accept private flood insurance if certain conditions are met. Specifically, the proposal would require a regulated lending institution to accept private flood insurance that meets the definition of this term to satisfy the FDPA's insurance requirement, provided that the private flood insurance policy also meets the conditions set forth in the general mandatory purchase requirement. Therefore, a regulated lending institution may only accept private flood insurance coverage under this provision if the building or mobile home and any personal property that secures the mortgage loan is covered for the term of that loan by the amount of flood insurance required by section 102(b)(1)(A) of the FDPA. As described above in *Definitions*, this proposal also would amend the Agencies' regulations to include the statutory definition of "private flood insurance."

The Agencies understand that there have been concerns regarding the ability of regulated lending institutions to evaluate whether a flood insurance policy meets the definition of "private flood insurance" set forth in the Act because some regulated lending institutions lack the necessary technical expertise. To facilitate compliance in this regard, the Agencies are proposing a safe harbor to allow lenders to rely on the expertise of State insurance regulators. Under the proposed safe harbor, if a State insurance regulator makes a written determination that a flood insurance policy issued by a private insurer meets the definition of "private flood insurance" set forth in the Act, then the Agencies will deem such policy to meet the statutory definition of "private flood insurance."

The Agencies note that regulating insurance providers is generally the domain of State insurance regulators. As a result, State insurance regulators may be the appropriate parties to determine whether a flood insurance policy meets all the criteria set forth in the statutory definition of "private flood insurance." The Agencies solicit comment on whether: (i) Any mechanism exists or may be developed by State regulators to make such a determination; (ii) a written determination would facilitate lenders' acceptance of flood insurance

by private insurers; (iii) such a safe harbor would alleviate the concerns of regulated lending institutions in evaluating private flood policies; and (iv) a safe harbor would enable the growth of the private flood insurance market.

Although section 102(b)(1)(B) of the FDPA, as added by section 100239(a)(1) of the Act, requires a regulated lending institution to accept private flood insurance that meets the statutory definition, the Agencies note that the statute is silent about whether a regulated lending institution may accept a flood insurance policy issued by a private insurer that does not meet the statutory definition. The Agencies believe that the Congressional intent of the statute was to stimulate the private flood insurance market.²⁶ Consequently, in addition to requiring regulated lending institutions to accept private flood insurance policies that comply with the statutory definition of "private flood insurance," the Agencies are considering whether to include a provision in the final rules that expressly permits regulated lending institutions to accept, as satisfaction of the FDPA's mandatory purchase requirement, a flood insurance policy issued by a private insurer that does not meet the Act's definition of "private flood insurance." The Agencies would include this provision pursuant to their authority under the FDPA to issue regulations directing lending institutions not to make, increase, extend, or renew any loan secured by property in a SFHA unless the property is covered by "flood insurance."²⁷

To assist with determining whether the Agencies should include this provision, the Agencies solicit comment on whether policies issued by private insurers that do not meet the statutory definition of "private flood insurance" should be permitted to satisfy the mandatory purchase requirement. Alternatively, the Agencies solicit comment on whether it is appropriate to include a provision in the final rules that specifically requires regulated lending institutions to accept only policies issued by private insurers that meet the statutory definition and, if included, what would be the effect of such a provision on the availability of privately issued flood insurance.

Furthermore, if the Agencies decide to include a provision in the final rules

that expressly permits regulated lending institutions, at their discretion, to accept policies issued by private insurers that do not meet the statutory definition of "private flood insurance" to satisfy the mandatory purchase requirement, the Agencies are requesting comment on whether they should require the following criteria for such discretionary policies pursuant to the Agencies' authority to implement the FDPA's general mandatory purchase requirement.

First, State insurance regulators, as the functional regulator of insurance companies, may be in the best position to evaluate the condition and ability of a private insurer to issue a flood insurance policy. Accordingly, the Agencies could require that flood insurance issued by a private insurer that a regulated lending institution may accept at its discretion must be issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located by the insurance regulator of the State. Further, in the case of a policy of difference in condition, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, the Agencies could require that the private insurance provider must be recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located.²⁸

Second, the Agencies could require that the coverage provided under any flood insurance policy issued by a private insurer that a regulated lending institution accepts at its discretion must be at least as broad as the coverage provided by a SFIP under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. For example, the private flood insurance policy must provide coverage for the foundation of a building in addition to the above-ground portion of the building. This criterion could ensure that a private flood insurance policy accepted by a regulated lending institution provides the institution and the borrower with appropriate and sufficient coverage for the property securing the loan.

²⁸ As discussed above in the **SUPPLEMENTARY INFORMATION** accompanying the definition of "private flood insurance" in *Definitions*, with respect to alien (non-U.S.) surplus lines insurers, States may not prohibit a surplus lines broker from placing non-admitted insurance with, or procuring non-admitted insurance from, a non-U.S., non-admitted insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC's IID List.

²⁶ The Act's reforms were designed to improve the NFIP's financial integrity and stability as well as to "increase the role of private markets in the management of flood insurance risk." H. Rep. No. 112-102, at 1 (2011); see also 158 Cong. Rec. H4622 (daily ed. June 29, 2012) (statement of Rep. Biggert).

²⁷ See 42 U.S.C. 4012a(b).

Finally, the Agencies could require that any flood insurance policy issued by a private insurer that a regulated lending institution accepts at its discretion must include a mortgage interest clause similar to the clause contained in a SFIP.²⁹ Therefore, the Agencies could require the mortgage interest clause to cover the interests of both the insured (whether such insured is a mortgagor/borrower or another entity that purchased the policy, such as a condominium owners' association) and the mortgagee (the lender). Having both the insured and the mortgagee covered in the mortgage interest clause would mean that, in the event of a loss, the interests of both the regulated lending institution and the insured would be protected.

The Agencies solicit comment as to whether requiring the above criteria for any flood insurance policy issued by a private insurer that a lender accepts at its discretion would be inconsistent with State legal requirements and industry practice with respect to private flood insurance. The Agencies also solicit comment as to whether criteria, additional to those discussed above, should be imposed if the Agencies permit regulated lending institutions to accept a private flood insurance policy issued by a private insurer that does not meet the statutory definition of "private flood insurance."³⁰ The Agencies believe that the proposed mandatory acceptance approach is consistent with both the statutory language and Congressional intent.³¹ Additionally, the Agencies request comment on whether allowing discretionary acceptance of flood insurance policies issued by private insurers not meeting the statutory definition of private flood insurance but requiring that such discretionary policies meet certain criteria could encourage development of the private flood insurance market while also ensuring that regulated lending institutions and borrowers are properly protected. The Agencies also seek comment regarding the experience of both lenders and their borrowers with respect to policies issued by private

insurers that do not meet the statutory definition of "private flood insurance" as compared to policies issued by private insurers that meet the statutory definition of "private flood insurance."

Regulated lending institutions have previously relied upon FEMA's "Mandatory Purchase of Flood Insurance Guidelines" (Guidelines) for guidance when determining whether a private insurance policy conforms to the flood insurance requirements. FEMA had advised that, to the extent that the private policy differs from the NFIP's policy, the differences should be carefully examined before accepting the policy. On February 4, 2013, FEMA rescinded the Guidelines and advised lenders to "consult their respective regulatory agency for information regarding compliance with the mandatory purchase requirements."³² The Agencies note that currently institutions continue to have the discretion to accept flood insurance issued by a private insurer pursuant to section 102(b)(1)(A) of the FDPA.

Exemptions

The Agencies are proposing a technical amendment to change the reference to the head of FEMA from Director to Administrator.

Escrow requirement

In General

Pursuant to section 102(d) of the FDPA, as amended by section 100209(a) of the Act and Public Law 112–281,³³ the Agencies are proposing to revise their regulations to require regulated lending institutions, or servicers acting on behalf of a regulated lending institution, to escrow all premiums and fees for flood insurance required for any loans secured by residential improved real estate or a mobile home unless the lending institutions qualify for the statutory exception.³⁴ In addition, these

premiums and fees must be payable with the same frequency as payments on the loan are made for the duration of the loan. Consistent with section 102(d) of the FDPA, as amended, the proposed provision applies to any loan secured by residential improved real estate or a mobile home that is made or is outstanding on or after July 6, 2014.

The Agencies are proposing to implement amended section 102(d) of the FDPA with some clarifications. First, as noted above, Public Law 112–281 amended section 102(d) of the FDPA, as amended by section 100209 of the Act, to insert the word "residential" prior to every mention of "improved real estate." The Agencies' understand that Congress's intent was to apply the escrow requirement to residential loans and exclude commercial loans.³⁵ Consequently, the Agencies are proposing that regulated lending institutions need not escrow flood insurance premiums and fees for loans that are an extension of credit for a business, commercial, or agricultural purpose even if secured by residential real estate. This exception is consistent with similar exceptions in the RESPA³⁶ and the Truth in Lending Act.³⁷

Second, the Agencies are proposing that when a regulated lending institution has determined that a borrower has obtained flood insurance coverage that meets the mandatory purchase requirement for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees into an escrow account that has been established by another lender, the institution need not establish another escrow account for the same purpose. Such circumstances may arise, for example, when the regulated lending institution takes a second lien position on a particular property and the borrower is already paying flood insurance premiums and fees on such

servicer would be required under the CFPB's rule to advance funds to continue the borrower's hazard insurance policy. In promulgating this rule, the CFPB relied on its authority under section 19(a) of RESPA to prescribe such rules and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA. The Agencies do not have a similar grant of consumer protection authority under any of the Federal flood statutes.

³⁵ In a floor statement on January 1, 2013, in support of S. 3677, which was adopted as Public Law No. 112–281, Congresswoman Biggert stated that the bill is "necessary to clarify that this escrowing provision only applies to 'residential' mortgage loans and not commercial and multifamily loans." The statement further provides that the bill does not impose new escrow obligations on commercial and multifamily real estate servicers.

³⁶ See 12 U.S.C. 2606(a).

³⁷ See 15 U.S.C. 1603(1).

²⁹ "Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear." NFIP Dwelling Form.

³⁰ Additionally, as indicated above, nothing in the Act can be construed to supersede or limit the Agencies' authority to establish requirements relating to the financial solvency, strength, or claims-paying ability of private insurance companies from which a regulated lending institution will accept private flood insurance. See 42 U.S.C. 4012a(b)(5).

³¹ 158 Cong. Rec. H4616–01, H4621–H4622 (daily ed. June 29, 2012) (statement of Rep. Biggert).

³² FEMA Letter, February 4, 2013. See <http://www.fema.gov/library/viewRecord.do?fromSearch=fromsearch&id=2954>.

³³ 126 Stat. 2485 (Jan. 14, 2013).

³⁴ The Agencies note that CFPB's mortgage servicing rule promulgated the new escrow requirements set forth in section 6 of RESPA, which were enacted in the Dodd-Frank Act. The CFPB's rule excludes flood insurance that is required under the FDPA from the new escrow requirements. 78 FR 10696, 10880 (Feb. 14, 2013). That is, the CFPB rule exempts from the definition of force-placed insurance, insurance required by the FDPA. *Ibid.* The CFPB's rule requires a servicer to advance funds to a borrower's escrow account and to disburse such funds in a timely manner to pay the premium charge on a borrower's hazard insurance (unless the servicer has a reasonable basis to believe that a borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges). Thus, even if a borrower were delinquent by more than 31 days, a

property into an escrow account established by the first lienholder. It is the Agencies' understanding that, in such cases, the lender in the second lienholder position will generally request the borrower to increase the current flood insurance policy coverage amount to satisfy the flood insurance purchase requirement for the second loan. The Agencies believe that the increase in premiums and fees due to the expanded coverage would then be paid into the escrow that was previously established by the first lienholder. Therefore, requiring a second escrow account to be established would not be necessary. However, if the first lienholder is not required to or otherwise does not escrow flood insurance premiums and fees for adequate insurance coverage for the residential improved real estate or a mobile home, the proposed rule would require the regulated lending institution in the second lienholder position to escrow required flood insurance premiums and fees, unless such regulated lending institution qualifies for an exception from the escrowing provisions.

Third, the Agencies recognize that when flood insurance coverage for a residential improved real estate or a mobile home is provided by a policy purchased by a common interest community, such as a condominium owners' association, the borrower is not the purchaser of the policy. If that policy is purchased by a common interest community in an amount that is sufficient to meet the mandatory flood insurance purchase requirement, then escrowing flood insurance premiums and fees on behalf of the borrower would not be necessary because the borrower would not be directly responsible for paying the flood insurance premiums or fees. As a result, the Agencies are proposing that a regulated lending institution need not establish an escrow account for flood insurance premiums and fees when the institution has determined that flood insurance coverage is provided by a policy purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the mandatory flood insurance purchase requirement, including coverage for the proper amount. If the amount of the policy purchased by a common interest community is insufficient to meet the mandatory flood insurance purchase requirement, however, the borrower would be required to obtain a supplemental policy to cover the

deficiency, and the proposed rule would require that the regulated lending institution escrow the premiums and fees for the supplemental policy. For example, if a condominium owners' association purchases an RCBAP or a private flood insurance policy for less than the maximum amount of insurance available under the NFIP, the borrower may be required to obtain a dwelling policy for supplemental coverage. If the borrower is required to obtain a dwelling policy, the proposed rule would require the regulated lending institution to escrow the premiums and fees for such policy.

Timing

The Agencies' proposal sets forth timing provisions that stipulate when regulated lending institutions must begin escrowing premiums and fees for required flood insurance. Section 100209(b) of the Act (42 U.S.C. 4012a note) provides that the escrow provisions apply to any mortgage outstanding or entered into on or after the expiration of the two-year period beginning on the date of enactment of the Act. Therefore, loans secured by residential improved real estate or a mobile home that are outstanding or entered into on or after July 6, 2014 are covered by this requirement, provided the loan is required to have flood insurance. Consequently, the Agencies propose that for any designated loans made on or after July 6, 2014, the regulated lending institution must begin escrowing upon loan consummation.

With respect to designated loans that are outstanding on July 6, 2014, the proposed rule would require regulated lending institutions to begin escrowing with the first loan payment after the first renewal date of the borrower's flood insurance policy that occurs on or after July 6, 2014. For example, if a borrower's current flood insurance policy will renew on March 15, 2015, and the borrower's loan payments are generally due the first of each month, the institution must begin escrowing with the loan payment due on April 1, 2015. The borrower would be responsible for paying the premium to renew the policy on March 15, 2015, however. Payments that are escrowed beginning April 1, 2015 will be used by the lender to pay the premiums for subsequent years.

The Agencies' proposal is intended to alleviate the potential burden to lenders and borrowers of establishing an escrow account for an outstanding loan for which a borrower was not previously escrowing flood insurance premiums and fees. By tying the establishment of the escrow to the time of flood

insurance policy renewal, the proposal would allow regulated lending institutions to comply with the requirement on a staggered basis, rather than requiring them to establish escrow accounts for all outstanding designated loans at one time.

The Agencies believe this proposal will also benefit borrowers. Delaying the establishment of the escrow until immediately after their flood insurance policy is renewed will ensure that all borrowers will have the maximum amount of time to escrow for their subsequent flood insurance policy renewal. If the Agencies were to require regulated lending institutions to establish escrow accounts for all outstanding designated loans at one time, some borrowers may be burdened with larger escrow payments to cover the premium for the full term over a shorter period of time than other borrowers. For example, if the Agencies required all regulated lending institutions to establish escrow accounts for all outstanding loans on July 6, 2014, then a borrower whose yearly flood insurance policy renewal date is September 15, 2014, would have only approximately two months to escrow for a full year of flood insurance premiums and fees while a borrower whose yearly flood insurance policy renewal date is March 15, 2015, would have approximately eight months to escrow for a full year of flood insurance premiums and fees. Consequently, the borrower with the March 15, 2015, renewal date would have smaller escrow payments each payment period than the borrower with the September 15, 2014 renewal date. Requiring regulated lending institutions to begin escrowing with the first loan payment after the borrower renews the existing policy would mean that all borrowers will have the maximum amount of time to escrow for the next flood insurance payment, regardless of when their policies renew.

The Agencies request comment on the timing proposed for complying with the escrow requirement for outstanding loans and whether regulated lending institutions should be provided the option of complying with the escrow requirement earlier than the dates set forth in the proposal. Lenders with a small number of designated loans that are not otherwise excepted from the escrow requirement may prefer to establish all required escrow accounts for outstanding designated loans in their portfolio at one time, prior to the insurance policy renewal dates. Permitting institutions to comply with the escrow requirement earlier, however, may mean that some

borrowers will have less time to make escrow payments for flood insurance premiums and fees associated with the first insurance policy payment to be paid out of the funds in the escrow than other borrowers, depending on when the regulated lending institution, or its servicer, decides to comply with the escrow requirement. Although borrowers would ultimately pay the same amount regardless of when the escrow begins, the Agencies request comment on whether lenders' early compliance with the escrow requirements would be otherwise detrimental to borrowers, and if so, how it may be detrimental.

The Agencies are also proposing to address the timing applicable to loans that were not designated loans at the time that they were made, but become designated loans after July 6, 2014. This may occur, for example, when there is a FEMA map change, and a building that was not previously located in an SFHA is now located in an SFHA. In those instances, the loan secured by such building may be required to have flood insurance under the FDPA. If flood insurance is required, a regulated lending institution, or a servicer acting on its behalf, also would be required to establish an escrow account to comply with the FDPA, as amended by the Act. The proposed rule would require regulated lending institutions to begin escrowing premiums and fees for required flood insurance with the first loan payment after the flood insurance policy is established. Under the proposal, this initial flood insurance policy may either be purchased by the borrower or, if the borrower failed to purchase a policy, force-placed by the regulated lending institution.

The following explanation illustrates how this provision would operate. Under the Agencies' proposal, in the situation in which a lender determines that a loan that was not originally a designated loan, but has become a designated loan, for example, due to remapping, the lender would notify the borrower that flood insurance is required, as provided in the force-placement provision of the rule. After the required notification, either the borrower would purchase and pay for a flood insurance policy or the lender would force-place a policy and charge the borrower for the cost of coverage. The lender also would commence escrowing payments to cover premiums and fees, which would be applied to the next annual policy renewal, upon the borrower's next loan payment.

The Agencies solicit comment on whether the requirement to begin escrowing for a loan that becomes a

designated loan after July 6, 2014, should be limited only to when a borrower-purchased flood insurance policy is established and exclude instances in which a lender-placed flood insurance policy is established. If the rule were to be limited only to when a borrower-purchased flood insurance is established, a regulated lending institution would not be required to escrow flood insurance premiums and fees when it force-places an initial flood insurance policy. In this instance, after the expiration of such a force-placed insurance policy, there would be no funds escrowed for any policy that may be purchased at that time, whether it is borrower-purchased or lender-placed. Under the proposed rule, a regulated lending institution would be required to escrow flood insurance premiums and fees following the establishment of a force-placed policy for a loan that becomes a designated loan after July 6, 2014. If a borrower fails to purchase the requisite flood insurance upon the expiration of such force-placed insurance, then the lender would use the escrowed funds to renew or purchase a new force-placed policy.

Notice

In order to ensure that borrowers are well-informed about the escrow requirement to collect premiums and fees for required flood insurance, the Agencies are proposing that regulated lending institutions provide borrowers with a written notice. Specifically, the proposed rule would mandate that a regulated lending institution, or a servicer acting on its behalf, mail or deliver a written notice informing a borrower that it is required to escrow all premiums and fees for required flood insurance on residential improved real estate. In order to facilitate compliance with the proposed notice requirement, the Agencies are proposing model language for this notice as discussed in more detail below in the **SUPPLEMENTARY INFORMATION** to Appendices A, B, and C. To minimize the burden to regulated lending institutions of providing this notice and to ensure that borrowers receive the notice at a time when they are considering the purchase of flood insurance, the proposal takes advantage of flood insurance notices that already are required under current law. Specifically, the proposal adds language regarding the escrow requirement to the existing Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, included in the Agencies' current rules as Appendix A. The proposal would require that, for designated loans made on or after July 6, 2014, a regulated lending institution,

or a servicer acting on its behalf, must provide a notice that contains language substantially similar to model clauses on the escrow requirement in the revised sample notice provided in Appendix A with or on the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance. Similarly, under the proposal, for a loan that becomes a designated loan after July 6, 2014, a regulated lending institution, or a servicer acting on its behalf, must provide notice concerning the escrow requirement with the force-placement notice, using language that is substantially similar to the sample language proposed in Appendix C.

However, for loans that are outstanding on July 6, 2014, there are no required notices under current law that the regulated lending institution would be certain to provide before the institution would be required to begin escrowing under the proposal. Consequently, the Agencies are proposing that a regulated lending institution, or a servicer acting on its behalf, provide a separate notice describing the escrow requirement, substantially similar to the sample notice proposed by the Agencies in Appendix B, at least 90 days before the regulated lending institution must begin escrowing. The Agencies believe that 90 days' advance notice would give borrowers sufficient time to gather the necessary funds for the escrow. However, the Agencies solicit comment on whether 90 days is an appropriate time period to provide notice for loans outstanding on July 6, 2014.

Exception

This proposal implements the statutory exception to the escrow requirement substantially as included in the Act with some clarifications. The statute states that, except as provided by State law, regulated lending institutions that have total assets of less than \$1 billion are exempt from this escrow requirement if, on or before July 6, 2012, the institution: (i) in the case of a loan secured by residential improved real estate or a mobile home, was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of the loan; and (ii) did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

Because the Act does not specify a point in time to measure the asset size of an institution to determine whether such institution qualifies for the

exception, the Agencies are proposing that a regulated lending institution may qualify for the exception if it has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years. Thus, a regulated lending institution would only be subject to the escrow requirement if it has assets of \$1 billion or more as of December 31 for at least two consecutive years. Consequently, if the proposal is finalized and becomes effective in 2014, regulated lending institutions with assets of \$1 billion or more as of both December 31, 2012, and December 31, 2013, would not qualify for the exception. In contrast, a regulated lending institution with assets of less than \$1 billion as of either December 31, 2012 or December 31, 2013, may qualify for the exception, provided the other conditions for the exception are met.

This measurement method is similar to how the OCC, the Board, and the FDIC have measured asset size in relation to the definitions for small entities under the Community Reinvestment Act (CRA).³⁸ The Agencies believe the asset measurement method these agencies have used with respect to CRA is an appropriate model in this case as it ensures an institution is definitively over the size threshold before requiring the institution to expend the resources needed to establish a new escrow program.

Moreover, the Agencies are proposing transition rules for a change in status of a regulated lending institution that may initially qualify for the exception, but later grows to exceed the \$1 billion asset size threshold. Similar to the Board's Regulation II, the Agencies propose to give regulated lending institutions approximately six months to begin complying with the escrow requirement.³⁹ The proposed rules would mirror the proposed rules concerning the timing requirements for when regulated lending institutions must begin to escrow for loans outstanding or entered into on or after July 6, 2014. Therefore, for any designated loans outstanding on July 1 of the succeeding calendar year after a regulated lending institution has a change in status, the proposal would require the institution to begin escrowing with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year. For any designated loan made after July 1 of the succeeding calendar year

after a regulated lending institution has a change in status, the proposed rule would require the institution to begin escrowing upon loan consummation. Finally, for any loan that becomes a designated loan after July 1 of the succeeding calendar year after a regulated lending institution has a change in status, the proposed rule would require the institution to begin escrowing with the first loan payment after the flood insurance policy is established.

For example, assume a regulated lending institution qualified for the exception in 2014, but had assets of \$1 billion or more as of December 31, 2014, and December 31, 2015. In that case, 2016 would be the succeeding calendar year. Under the proposal, such regulated lending institution would be required to begin escrowing with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1, 2016, for any loan outstanding on July 1, 2016. For any designated loan made after July 1, 2016, the proposal would require such institution to begin escrowing upon loan consummation. For any loan that becomes a designated loan after July 1, 2016, the proposal would require such institution to begin escrowing with the first loan payment after the flood insurance policy is established.

In addition, the Agencies are proposing the same notice obligation for regulated lending institutions after a change in status with similar timing requirements as would apply to other regulated lending institutions that are subject to the escrow requirement. As a result, for loans that are outstanding on July 1 of the succeeding calendar year after a regulated lending institution has a change in status, the proposal would require a regulated lending institution to provide notice on the escrow requirement at least 90 days before the regulated lending institution must begin escrowing, using language that is substantially similar to the language provided in Appendix B. For designated loans that are made on or after July 1 of the succeeding calendar year after a regulated lending institution has a change in status, the Agencies propose that notice concerning the escrow requirement be provided with the notice of special flood hazards, using language that is substantially similar to the escrow requirement language provided in the sample form of notice contained in Appendix A. Finally, for a loan that becomes a designated loan after July 1 of the succeeding calendar year after a regulated lending institution has a change in status, notice concerning the escrow requirement would be provided

with the force-placement notice under the proposal, using language substantially similar to the sample language provided in Appendix C.

Change in Ownership

The Agencies also are proposing a provision to address situations in which a regulated lending institution that is required to comply with the escrow requirement acquires a designated loan that is covered by FDPA-required flood insurance that becomes subject to the escrow requirement as a result of the acquisition. For example, this may occur if a lender that qualifies for the statutory exception sells the loan to or merges with a regulated lending institution that must comply with the escrow requirement. In these cases, the Agencies are proposing that the regulated lending institution must begin escrowing premiums and fees for flood insurance with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan. For instance, suppose a regulated lending institution that is required to comply with the escrow requirement purchases loans from an institution that is not subject to the escrow requirement, and the transfer date for the loans is February 1, 2015. Under the proposal, for any designated loan that is transferred on February 1, 2015, the regulated lending institution that acquires the loan must begin escrowing premiums and fees for flood insurance with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after August 1, 2015.

This proposed timing is similar to the timing the Agencies have proposed for regulated lending institutions that no longer qualify for the statutory exception. Furthermore, as with the notice requirement proposed for other outstanding designated loans, the Agencies are proposing that a regulated lending institution provide notice at least 90 days before the institution must begin to escrow for a designated loan that becomes subject to the escrow requirement as a result of a change in loan ownership.

Required use of standard flood hazard determination form.

The Agencies are proposing technical amendments in this section to change the reference to the head of FEMA from Director to Administrator and to update how a lending institution may obtain the standard flood hazard insurance form by directing the institution to FEMA's Web site.

³⁸ See 12 CFR 25.12(u); 12 CFR 195.12(u); 12 CFR 228.12(u); and 12 CFR 345.12(u).

³⁹ See 12 CFR 235.5(a)(3).

Force placement of flood insurance.

Pursuant to section 102(e) of the FDPA, as amended by section 100244 of the Act, the Agencies are proposing to amend their rules for the force-placement of flood insurance.⁴⁰ The proposal implements section 100244 of the Act by setting forth when a regulated lending institution or its servicer may begin to charge the borrower for force-placed insurance, the circumstances under which a regulated lending institution or its servicer must terminate force-placed insurance and refund payments, and what documentary evidence is sufficient to demonstrate a borrower has flood insurance coverage.

Notice and Purchase of Coverage

Under current regulations, if a regulated lending institution, or a servicer acting on its behalf, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the FDPA, then the regulated lending institution or its servicer must notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under the mandatory purchase requirements, for the remaining term of the designated loan. If the borrower fails to obtain adequate flood insurance within 45 days after notification, then the regulated lending institution or its servicer must purchase flood insurance on behalf of the borrower. The regulated lending institution or servicer may charge the borrower for the cost of the premiums and fees incurred in purchasing the insurance. Pursuant to section 102(e) of the FDPA, as amended by section 100244 of the Act, the Agencies propose to amend their regulations to provide that the regulated lending institution or its servicer may charge the borrower for the cost of premiums and fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. The Agencies' understanding is that the date on which the flood insurance coverage lapsed is the expiration date provided in the policy.

⁴⁰ The Agencies note that section 1463(a) of the Dodd-Frank Act sets forth requirements relating to the force placement of hazard insurance. The CFPB has excluded flood insurance required under the FDPA from the force placement requirements in its rule implementing this provision. 78 FR 10696, 10880 (February 14, 2013).

The Agencies seek comment on whether the Agencies' interpretation of the term "lapsed" is consistent with the insurance industry's use of the term and as to whether further clarification is necessary on when a lender or servicer may begin to charge for force-placed flood insurance.

For purposes of safety and soundness, regulated lending institutions should monitor the continuous coverage of flood insurance for the building or mobile home and any personal property securing a designated loan. Additionally, the Agencies interpret the Act to permit a regulated lending institution to force-place a flood insurance policy purchased on behalf of a borrower that is effective the day after expiration of a borrower's original insurance policy to ensure that it is continuous. Such a practice will ensure that institutions complete the force-placement of flood insurance in a timely manner upon lapse of the policy and that there is continuous insurance coverage to protect both the borrower and the institution.

Termination of Force-Placed Insurance

As provided in section 102(e)(3) of the FDPA, as added by section 100244 of the Act, the Agencies propose that within 30 days of receipt by a regulated lending institution, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, a regulated lending institution is required to: (i) Notify the insurer to terminate any force-placed insurance purchased by the regulated lending institution or its servicer; and (ii) refund to the borrower all premiums paid by the borrower for any insurance purchased by the regulated lending institution or its servicer under this section for any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the regulated lending institution or its servicer were each in effect (overlap period), and any related fees charged to the borrower with respect to the insurance purchased by the regulated lending institution or its servicer during such overlap period.

The Agencies realize that, although regulated lending institutions and servicers can request that a force-placed insurance policy be terminated, the insurer is the party that actually cancels the policy. The Agencies' proposal therefore clarifies the statutory language in section 102(e)(3) of the FDPA, as amended by section 100244 of the Act, to require the institution only to notify the insurer to terminate the force-placed policy and to fully refund to the borrower the premiums and fees for the

overlap period within the 30-day period required by the statute.

In addition, the Agencies note that section 102(e)(3) of the FDPA, as amended, and the Agencies' proposed regulations, do not specify a party from which a regulated lending institution must receive confirmation of a borrower's existing flood insurance coverage. Therefore, regulated lending institutions may receive the confirmation from either the borrower or a third party, such as an insurance agent or insurer with whom the institution has direct contact.

Sufficiency of Demonstration

Pursuant to section 102(e)(4) of the FDPA, as amended by section 100244 of the Act, the Agencies propose that for the purposes of confirming a borrower's existing flood insurance coverage, a regulated lending institution or its servicer must accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or its agent, as confirmation of the existence of coverage. A lender is responsible for making all necessary inquiries into the adequacy of the borrower's insurance policy to ensure the policy complies with the mandatory purchase requirement. If the lender determines the coverage amount or any terms and conditions fail to meet applicable requirements, the lender should notify the borrower and request the borrower to obtain an adequate flood insurance policy.

Determination fees.

The Agencies are proposing technical amendments in this section to change the references to the head of FEMA from Director to Administrator.

Notice of special flood hazards and availability of Federal disaster relief assistance.

Section 100239 of the Act adds a new section 102(b)(6) to the FDPA (42 U.S.C. 4012a(b)(6)) requiring regulated lending institutions to disclose to a borrower that: (i) Flood insurance is available from private insurance companies that issue SFIPs on behalf of the NFIP or directly from the NFIP; (ii) flood insurance that provides the same level of coverage as an SFIP under the NFIP may be available from a private insurance company that issues policies on behalf of the company; and (iii) the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies

issued on behalf of the NFIP and policies issued on behalf of private insurance companies and to direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent. Furthermore, section 100239(b) of the Act amends section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)) to require that the disclosures in section 102(b)(6) of the FDPA be provided in the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance. Therefore, the proposal requires the disclosures set forth in section 102(b)(6) of the FDPA to be included in the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, and the Agencies have proposed model language to include in the sample form of notice contained in Appendix A.

Notice of servicer's identity.

The Agencies are proposing technical amendments in this section to change the references to the head of FEMA from Director to Administrator.

Appendices A, B, & C

As noted above in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to *Notice of special flood hazards and availability of Federal disaster relief assistance*, the Agencies are proposing to amend the sample form of notice contained in Appendix A to include the disclosures required by section 102(b)(6) of the FDPA, as added by section 100239 of the Act, regarding the availability of private flood insurance coverage. The proposed additions to the sample form closely track the statutory language. The Agencies also are proposing to revise the language relating to the coverage limit to more accurately reflect what is actually covered under the Federal flood statutes, as discussed in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to *Requirement to purchase flood insurance coverage where available*. Specifically, the Agencies are proposing that the language be amended to state that flood insurance coverage is available only on the building or mobile home and any personal property that secures the loan and not the land itself. The Agencies propose other technical amendments to the sample form of notice contained in Appendix A, to change the references to the head of FEMA from Director to Administrator.

In addition, as discussed in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to *Escrow requirement*, the Agencies are proposing that regulated lending

institutions mail or deliver a written notice informing borrowers about the requirement to escrow premiums and fees for required flood insurance. To facilitate compliance with the proposed notice requirement, the Agencies are proposing model language that may be included, if applicable, in the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance as set forth in the sample form of notice contained in Appendix A. The Agencies also are proposing a sample form of notice in new Appendix B that may be used for designated loans that are outstanding as of the date a regulated lending institution becomes subject to the escrow requirement or acquires a designated loan that becomes subject to the escrow requirement. Finally, new Appendix C provides a proposed Sample Clause with respect to the escrow requirement notice that regulated lending institutions could include in a notice of force-placement for a loan that becomes a designated loan after a regulated lending institution becomes subject to the escrow requirement.

V. Regulatory Analysis

Regulatory Flexibility Act

OCC: In general, the Regulatory Flexibility Act (RFA) requires that in connection with a notice of proposed rulemaking an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.⁴¹ Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule. We have concluded that the proposed rule does not have a significant economic impact on a substantial number of small entities supervised by the OCC.

The OCC currently supervises approximately 1,257 small national banks, Federal savings associations, trust companies, and branches or agencies of foreign banks.⁴² If

⁴¹ See 5 U.S.C. 601 *et seq.*

⁴² We base our estimate of the number of active small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are \$500 million and \$35.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR § 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify a bank we supervise as a small entity. We use December 31, 2012 to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8

implemented, the draft NPRM would impact approximately 871 of these small institutions. Thus, the proposed rule impacts a substantial number of small institutions. The OCC classifies the economic impact of total costs on an institution as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense. The OCC estimates that the average cost per small institution is approximately \$23,000 per year.⁴³ Using this cost estimate, we believe the proposed rule will have a significant economic impact on eleven small institutions supervised by the OCC, which is not a substantial number. Therefore, pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required.

Board: The RFA requires an agency to publish an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Board is publishing an initial regulatory flexibility analysis and requests public comment on all aspects of its analysis. The Board will conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The Board is proposing revisions to Regulation H to implement certain provisions of the Act over which the Agencies, including the Board, have jurisdiction. Consistent with the Act, the proposal would require a regulated lending institution (or its servicer) to escrow the premiums and fees for required flood insurance for any loan secured by residential improved real estate or a mobile home, unless the lender qualifies under the statutory exception for certain small lenders.

The proposal also would implement the Act's requirement that regulated lending institutions accept any private insurance policy that meets the Act's definition of "private flood insurance" in satisfaction of the mandatory purchase requirement. The proposed

of the U.S. Small Business Administration's *Table of Size Standards*.

⁴³ Because the OCC does not have the information to determine whether a small institutions would meet the exception for the escrow requirement provided by proposed § 22.5(c), we have not applied this exception in our calculations. Therefore, our estimated costs per small bank may be overstated.

rule would also include a safe harbor allowing lenders to rely on a State insurance regulator's written determination that a particular private insurance policy satisfies the Act's definition. Regulated lending institutions would also be required to provide disclosures on the availability of private flood insurance, as mandated by the Act.

The Act also includes provisions related to the force placement of flood insurance, which the proposal would implement. These provisions clarify that regulated lending institutions may charge a borrower for the cost of premiums and fees incurred in the purchase of force-placed flood insurance from the date coverage lapsed or did not provide a sufficient amount of coverage. The provisions also provide that within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage, a regulated lending institution is required to terminate any force-placed insurance purchased by the regulated lending institution, and refund to the borrower all premiums paid by the borrower for lender-placed coverage for any period during which the borrower's flood insurance coverage and the lender-place coverage overlapped.

2. Small entities affected by the proposed rule. All State member banks that are subject to Regulation H would be subject to the proposed rule. As of June 30, 2013, there were 844 State member banks. Under regulations issued by the Small Business Administration (SBA), banks and other depository institutions with total assets of \$500 million or less are considered small. Of the 844 State member banks subject to Regulation H, approximately 634 State member banks would be considered small entities by the SBA.

As discussed in detail above in the **SUPPLEMENTARY INFORMATION**, regulated lending institutions with total assets less than \$1 billion would generally be exempt from the proposed rules implementing the escrow provisions of the Act. Therefore, the escrow provisions of the proposed rule would generally not affect small entities. Furthermore, the Act's force placement provisions already went into effect upon passage of the Act on July 6, 2012. As a result, the proposed rules implementing the Act's force placement provisions should not have any impact on small entities who were required to comply with the provisions as of July 6, 2012. Even prior to the Act's passage, regulated lending institutions, including those that are considered small entities, would have had mechanisms in place to refund premiums and fees to borrowers

for any period of overlap between a force placed policy and a borrower's policy. Consequently, the Act's force placement provisions, which set forth procedures for terminating force placed insurance and refunding premiums and fees to the borrower, nevertheless would have had minimal impact on regulated lending institutions.

With respect to the proposed rules regarding the acceptance of private flood insurance, the Board believes the rules will not have a significant impact on small entities because regulated lending institutions, including those that are considered small entities, currently are permitted to accept private flood insurance policies. Moreover, as discussed in the **SUPPLEMENTARY INFORMATION**, the proposed rule would seek to alleviate the burden on regulated lending institutions, including those that are considered small entities, of evaluating whether a flood insurance policy issued by a private insurer meets the definition of "private flood insurance" by providing a safe harbor permitting lenders to rely on the determination of a State insurance regulator. Small entities will be required under the proposal to amend their notices of special flood hazards to include information on the availability of private flood insurance. The proposal provides sample forms to facilitate compliance and reduce burden upon small institutions.

3. Other Federal rules. The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any Federal rule.

4. Significant alternatives to the proposed revisions. The Board solicits comment on any significant alternatives that would reduce the regulatory burden associated with this proposed rule on small entities.

FDIC: The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to \$500 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. As of March 31, 2013, there were approximately 3,711 small FDIC-

supervised banks which include 3,398 State nonmember banks and 259 State-chartered savings banks, and 54 savings associations.

It is the opinion of the FDIC that the proposed rule will not have a significant economic impact on a substantial number of the small entities, which the FDIC supervises. The FDIC reaches this conclusion in reliance upon the fact that the only requirements that the Act requires the Agencies to impose upon supervised entities as a matter of regulation are the escrow requirement and the requirement to accept private flood insurance. The Act provides that generally a depository institution with assets of less than \$1 billion is not required to comply with the escrow requirement. As a result, due to this statutory exclusion, by law the escrow requirement cannot have a significant economic impact on a substantial number of small entities. The requirement to accept private flood insurance also cannot have a significant economic impact on a substantial number of small entities since depository institutions were permitted to accept private flood insurance for NFIP purposes even before the Act's amendments. For these reasons, the FDIC certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities that it supervises.

FCA:

Pursuant to section 605(b) of the RFA, the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the RFA.

NCUA:

The RFA requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.⁴⁴ For purposes of this analysis, NCUA considers small credit unions to be those having under \$50 million in assets.⁴⁵ As of June 30, 2013, there are 1,803 small, federally insured credit unions. The proposed rule would require a credit union to escrow the premiums and fees for required flood

⁴⁴ 5 U.S.C. 603(a).

⁴⁵ Interpretive Ruling and Policy Statement 03-2, 68 FR 31949 (May 29, 2003), as amended by Interpretive Ruling and Policy Statement 13-1, 78 FR 4032 (Jan. 18, 2013).

insurance for any loan secured by residential improved real estate or a mobile home. The proposed rule would also implement the requirement that credit unions accept any private insurance policy that meets the statutory definition of "private flood insurance", and includes provisions related to the force placement of flood insurance.

Under this proposed rule, credit unions with total assets less than \$1 billion would generally be exempt from the escrow provisions. Therefore, the escrow provisions of the proposed rule would not affect small credit unions. For private flood insurance, NCUA does not believe the proposed rule will have a significant impact on small credit unions since credit unions are currently allowed to accept private flood insurance. In addition, the proposed rule provides a safe harbor for regulated lending institutions (which includes credit unions), including small entities, for evaluating whether a flood insurance policy issued by a private insurer meets the definition of "private flood insurance". Lastly, the force placement provisions in the proposed rule were effective on July 6, 2012, and credit unions have been enforcing force placement provisions already. In addition, credit unions currently have the tools to refund premiums and fees whenever a borrower's policy overlaps a force-placed policy, as required in the proposed rule.

NCUA finds that this proposed rule would affect relatively few federally insured, small credit unions and the associated cost is minimal. Accordingly, NCUA certifies the rule will not have a significant economic impact on small entities.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) requires certain agencies, including the OCC, to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC has estimated that the total cost associated with this NPRM, if implemented, would be approximately \$72 million and the average cost per institution would be \$55,000. However, pursuant to section 201 of the UMRA,

a regulation does not impose a mandate to the extent it incorporates requirements "specifically set forth in the law." Therefore, we exclude from our UMRA estimate costs specifically related to requirements set forth in the Act, such as costs related to establishing escrow accounts, amendments to the force placement provisions, and the acceptance of private flood insurance policies. Furthermore, under Title II of the UMRA, indirect costs, foregone revenues and opportunity costs are not included when determining if a mandate meets or exceeds UMRA's cost threshold. Therefore, based on these exclusions, our UMRA cost estimate for the NPRM, if implemented, is zero.

Accordingly, because the OCC has determined that this proposed rule would not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more, we have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Paperwork Reduction Act of 1995

The OCC, Board, FDIC, and NCUA (the Agencies)⁴⁶ have determined that this proposed rule involves a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 *et seq.*).

In accordance with the PRA (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this proposed rule is found in 12 CFR 22.5, 208.25(e), 339.5, and 760.5. In addition, as permitted by the PRA, the OCC, Board, and FDIC also propose to extend for three years their respective information collections.

The Agencies may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control numbers are 1557-0202 (OCC), 7100-0280 (Board), and 3064-0120 (FDIC).⁴⁷

⁴⁶ The FCA has determined that the proposed rule does not involve a collection of information pursuant to the PRA for System institutions because System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of "collection of information" contained in 44 U.S.C. 3502(3).

⁴⁷ NCUA's part 760 contains various information collection requirements as described in the PRA and previously submitted by NCUA.

The proposed rule adds a notice requirement stating that institutions or services that are required to escrow all premiums and fees for required flood insurance must issue a written notice to the borrower.

This information collection is required to evidence compliance with the requirements of the Federal flood insurance statutes with respect to lenders and servicers. Because the Agencies do not collect any information, no issue of confidentiality arises. The respondents are for-profit and non-profit financial institutions, including small businesses.

Entities subject to the Agencies' existing flood insurance rules will have to review and revise disclosures that are currently provided to ensure that such disclosures accurately reflect the disclosure requirements in this proposed rule. Entities subject to the rule may also need to develop new disclosures to meet the proposed rule's timing requirements.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Agencies. The Agencies expect that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent.

The Agencies estimate that respondents would take, on average, 40 hours to update their systems in order to comply with the disclosure requirements and the one-time escrow notice under the proposed rule. In an effort to minimize the compliance cost and burden, particularly for small entities that do not meet the requirement for the statutory exception, the proposed rule contains model disclosures in appendices A, B, and C that may be used to satisfy the requirements.

Burden Estimates

OCC:

Number of Respondents: 1,316.

Burden for Existing Recordkeeping Requirements: 196,907 hours.

Burden for Existing Disclosure Requirements: 244,208 hours.

Burden for Proposed Rule: 52,640 hours.

Total Burden for Collection: 493,755 hours.

Board:

Number of Respondents: 843.

Burden for Existing Recordkeeping Requirements: 14,191 hours.

Burden for Existing Disclosure Requirements: 17,632 hours.

Burden for Proposed Rule: 33,720 hours.

Total Burden for Collection: 65,543 hours.

FDIC:

Number of Respondents: 4,421.

Burden for Existing Recordkeeping Requirements: 61,894 hours.

Burden for Existing Disclosure Requirements: 76,999 hours.

Burden for Proposed Rule: 176,840 hours.

Total Burden for Collection: 315,733 hours.

NCUA:

Number of Respondents: 4,192.

Burden for Existing Recordkeeping Requirements: 57,230.85 hours.

Burden for Existing Disclosure Requirements: 70,966.26 hours.

Burden for Proposed Rule: 8,240 hours.

Total Burden for Collection: 136,437.11 hours.

These collections are available to the public at www.reginfo.gov.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agencies' functions; including whether the information has practical utility; (2) the accuracy of the Agencies' estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments on the collection of information should be sent to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: [1557-0202], 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Board: Cynthia Ayouch, Federal Reserve Clearance Officer, Office of the Chief Data Officer, Mail Stop 95, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0280), Washington, DC 20503.

FDIC: You may submit comments, which should refer to "Interagency Flood Insurance, 3064-0120" by any of the following methods:

- **Agency Web site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments on the FDIC Web site.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** comments@FDIC.gov. Include "Interagency Flood Insurance, 3064-0120" in the subject line of the message.

- **Mail:** Gary A. Kuiper, Counsel, Attn: Comments, Room NYA-5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any personal information provided.

NCUA: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-837-2861, Email: OCIOFRA@ncua.gov.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395-6974; or by email to oira_submission@omb.eop.gov.

List of Subjects

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 172

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 391

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the OCC proposes to amend Part 12 Chapter I as follows:

■ 1. Revise Part 22 to read as follows::

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

22.1 Purpose and scope.

22.2 Definitions.

22.3 Requirement to purchase flood insurance where available.

22.4 Exemptions.

22.5 Escrow requirement.

22.6 Required use of standard flood hazard determination form.

22.7 Force-placement of flood insurance.

22.8 Determination fees.

22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

22.10 Notice of servicer's identity.

Appendix A to Part 22—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Appendix B to Part 22—Sample Form of Notice of Requirement to Escrow For Outstanding Loans

Appendix C to Part 22—Sample Escrow Requirement Clause for Loans That Become Designated Loans

Authority: 12 U.S.C. 93a, 1462a, 1463, 1464, and 5412(b)(2)(B); 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 22.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(b) *Scope.* This part, except for §§ 22.6 and 22.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 22.6 and 22.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 22.2 Definitions.

For the purposes of this part:

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

(g) *NFIP* means the National Flood Insurance Program authorized under the Act.

(h) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of

insurance in the State or jurisdiction which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage;

(2) Provides flood insurance coverage which is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) Includes all of the following:

(i) A requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The national bank or Federal savings association that made the designated loan secured by the property for which the insurance is providing coverage;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in the standard flood insurance policy under the NFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Federal savings association* means, for purposes of this part, a Federal savings association as that term is defined in 12 U.S.C. 1813(b)(2) and any service corporations thereof.

(k) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(l) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent

chance of flooding in any given year, as designated by the Administrator of FEMA.

(m) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§ 22.3 Requirement to purchase flood insurance where available.

(a) *In general.* A national bank or Federal savings association shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* A national bank or Federal savings association that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

(c) *Private flood insurance.* (1) *Mandatory acceptance.* A national bank or Federal savings association must accept private flood insurance, as defined in § 22.2(h), as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (a) of this section.

(2) *Safe harbor.* A flood insurance policy shall be deemed to meet the definition of private flood insurance in § 22.2(h) for purposes of paragraph (a) of this section if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance in § 22.2(h).

§ 22.4 Exemptions.

The flood insurance requirement prescribed by § 22.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

§ 22.5 Escrow requirement.

(a) *In general.* (1) *Applicability.*

Except as provided in paragraph (c) of this section, a national bank or Federal savings association, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 22.3(a) for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are made for the duration of the loan, unless the national bank or Federal savings association has determined that:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) The borrower has obtained flood insurance coverage that meets the requirements of § 22.3(a) for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of § 22.3(a).

(2) *Timing.* A national bank or Federal savings association that is subject to paragraph (a) of this section, other than due to a change in status under paragraph (c)(2) of this section or for acquired loans subject to paragraph (d) of this section, shall begin escrowing premiums and fees for flood insurance:

(i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(ii) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 6, 2014, with the first loan payment after the flood insurance policy is established.

(3) *Escrow Account.* The national bank or Federal savings association, or a servicer acting on behalf of the national bank or Federal savings association, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be

maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the national bank or Federal savings association, or a servicer acting on behalf of the national bank or Federal savings association, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* A national bank or Federal savings association that is required to comply with paragraph (a) of this section, or a servicer acting on behalf of the national bank or Federal savings association, shall mail or deliver a written notice informing the borrower that the national bank or Federal savings association is required to escrow all premiums and fees for required flood insurance:

(1) For loans subject to paragraphs (a)(2)(i), (c)(2)(i), or (d) of this section, at least 90 days before the escrow of premiums and fees under paragraphs (a)(2)(i), (c)(2)(i), or (d), using language that is substantially similar to the model form in appendix B;

(2) For loans subject to paragraphs (a)(2)(ii) or (c)(2)(ii) of this section, with the notice provided under § 22.9, using language that is substantially similar to model clauses on the escrow requirement in appendix A; or

(3) For loans subject to paragraphs (a)(2)(iii) or (c)(2)(iii) of this section, with the notice provided under § 22.7, using language that is substantially similar to model clauses on the escrow requirement in appendix C.

(c) *Exception.* (1) *Qualification.* Except as may be required under applicable State law, paragraphs (a)(1) and (2) of this section do not apply to a national bank or Federal savings association:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of a loan secured by residential improved real estate or a mobile home; and

(B) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If a national bank or Federal savings association

previously qualified for the exception in paragraph § 22.5(c)(1), but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the national bank or Federal savings association must begin escrowing premiums and fees for flood insurance pursuant to § 22.3(a):

(i) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year;

(ii) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first loan payment after the flood insurance policy is established.

(d) *Change in ownership.* If a national bank or Federal savings association that is required to comply with paragraph (a) of this section acquires a designated loan covered by flood insurance required under § 22.3(a) that becomes subject to paragraph (a) of this section as a result of the bank's or savings association's acquisition of the loan, the bank or savings association must begin escrowing premiums and fees for flood insurance pursuant to paragraph (a) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan.

§ 22.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A national bank or Federal savings association shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A national bank or Federal savings association may obtain the standard flood hazard determination form from FEMA's Web site at www.fema.gov.

(b) *Retention of form.* A national bank or Federal savings association shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank or savings association owns the loan.

§ 22.7 Force-placement of flood insurance.

(a) *Notice and purchase of coverage.* If a national bank or Federal savings association, or a servicer acting on behalf of the bank or savings association, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 22.3, then the national bank or Federal savings association, or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 22.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the national bank or Federal savings association, or its servicer, shall purchase insurance on the borrower's behalf. The national bank or Federal savings association, or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance.* (1) *Termination and refund.* Within 30 days of receipt by a national bank or Federal savings association, or a servicer acting on the bank's or saving association's behalf, of a confirmation of a borrower's existing flood insurance coverage, the national bank or Federal savings association, or its servicer shall:

(i) Notify the insurance provider to terminate any insurance purchased by the national bank or Federal savings association or its servicer under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the national bank or Federal savings association or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the national bank or Federal savings association or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the national bank or Federal savings association or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, a national bank or Federal savings association or its servicer shall accept from the

borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.

§ 22.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973 as amended (42 U.S.C. 4001—4129), any national bank or Federal savings association, or a servicer acting on behalf of the national bank or Federal savings association, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of flood plain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located;

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender, or its servicer, on behalf of the borrower under § 22.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a national bank or Federal savings association makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank or savings association shall mail or deliver a written notice to the borrower and to the servicer in all cases whether

or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP;

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP also may be available from a private insurance company that issues policies on behalf of the company;

(5) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and

(6) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster.

(c) *Timing of notice.* The national bank or Federal savings association shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank or savings association provides notice to the borrower and in any event no later than the time the bank or savings association provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The national bank or Federal savings association shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time it owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a national bank or Federal savings association may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The national bank or Federal savings association shall retain a record of the written assurance from the seller or lessor for the period of time it owns the loan.

(f) *Use of prescribed form of notice.* A national bank or Federal savings association will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

§ 22.10 Notice of servicer's identity.

(a) *Notice requirement.* When a national bank or Federal savings association makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, it shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the national bank's or Federal savings association's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The national bank or Federal savings association shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

APPENDIX A TO PART 22—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Administrator of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Administrator of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- At a minimum, flood insurance purchased must cover the lesser of:
 - (1) the outstanding principal balance of the loan; or
 - (2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures your loan and not the land itself.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

Availability of Private Flood Insurance Coverage

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare

the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

[Escrow Requirement for Residential Loans]

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the insurance provider.]

Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally declared flood disaster.

APPENDIX B TO PART 22—SAMPLE FORM OF NOTICE OF REQUIREMENT TO ESCROW FOR OUTSTANDING LOANS

Notice of Escrow Requirement

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

How the Escrow Will Work

Federal law requires that you pay flood insurance premiums and fees with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

When the Escrow Will Start

When you receive your next flood insurance bill with the renewal of your policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the bank will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert Name of Lender or Servicer] at [Insert Contact Information].

APPENDIX C TO PART 22—SAMPLE ESCROW REQUIREMENT CLAUSE FOR LOANS THAT BECOME DESIGNATED LOANS

Escrow Requirement Clause

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

PART 172—[REMOVED]

■ 2. Remove part 172.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. Revise § 208.25 as follows:

§ 208.25 Loans in areas having special flood hazards.

(a) *Purpose and scope*—(1) *Purpose*. The purpose of this section is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of

1973, as amended (42 U.S.C. 4001–4129).

(2) *Scope*. This section, except for paragraphs (f) and (h) of this section, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Paragraphs (f) and (h) of this section apply to loans secured by buildings or mobile homes, regardless of location.

(b) *Definitions*. For purposes of this section:

(1) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(2) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(3) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(4) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(5) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(6) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this section, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the National Flood Insurance Program.

(7) *NFIP* means the National Flood Insurance Program authorized under the Act.

(8) *Private flood insurance* means an insurance policy that:

(i) Is issued by an insurance company that is:

(A) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(B) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located in the case of a policy of

difference in conditions, multiple peril, all risk, or other blanket coverage;

(ii) Provides flood insurance coverage which is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(iii) Includes all of the following:

(A) A requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to:

(1) The insured; and

(2) The member bank that made the designated loan secured by the property for which the insurance is providing coverage;

(B) Information about the availability of flood insurance coverage under the NFIP;

(C) A mortgage interest clause similar to the clause contained in the standard flood insurance policy under the NFIP; and

(D) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(iv) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

(9) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(10) *Servicer* means the person responsible for:

(i) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(ii) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(11) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

(12) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(c) *Requirement to purchase flood insurance where available*—(1) *In general*. A member bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood

insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(2) *Table funded loans.* A member bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this section.

(3) *Private flood insurance.* (i) *Mandatory acceptance.* A member bank must accept private flood insurance, as defined in paragraph (b)(8) of this section, as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (c)(1) of this section.

(ii) *Safe harbor.* A flood insurance policy shall be deemed to meet the definition of private flood insurance in paragraph (b)(8) of this section for purposes of paragraph (c)(1) of this section if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance in paragraph (b)(8) of this section.

(d) *Exemptions.* The flood insurance requirement prescribed by paragraph (c) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

(e) *Escrow requirement.* (1) *In general.*

(i) *Applicability.* Except as provided in paragraph (e)(3) of this section, a member bank, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are made for the duration of the loan, unless the member bank has determined that:

(A) The loan is an extension of credit primarily for business, commercial, or agricultural purposes; or

(B) The borrower has obtained flood insurance coverage that meets the requirements of paragraph (c)(1) of this section for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(C) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of paragraph (c) of this section.

(ii) *Timing.* A member bank that is subject to paragraph (e)(1) of this section, other than due to a change in status under paragraph (e)(3)(ii) of this section or for acquired loans subject to paragraph (e)(4) of this section, shall begin escrowing premiums and fees for flood insurance:

(A) for any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(B) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(C) For any loan that becomes a designated loan after July 6, 2014, with the first loan payment after the flood insurance policy is established.

(iii) *Escrow account.* The member bank, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the member bank, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(2) *Notice.* A member bank that is required to comply with paragraph (e)(1) of this section, or a servicer acting on its behalf, shall mail or deliver a written notice informing the borrower that the member bank is required to

escrow all premiums and fees for required flood insurance:

(i) For loans subject to paragraphs (e)(1)(ii)(A), (e)(3)(ii)(A), or (e)(4) of this section, at least 90 days before the escrow of premiums and fees under paragraphs (e)(1)(ii)(A), (e)(3)(ii)(A), or (e)(4) of this section, using language that is substantially similar to the model form in appendix B; or

(ii) For loans subject to paragraphs (e)(1)(ii)(B) or (e)(3)(ii)(B) of this section, with the notice provided under paragraph (i) of this section, using language that is substantially similar to model clauses on the escrow requirement in appendix A; or

(iii) For loans subject to paragraphs (e)(1)(ii)(C) or (e)(3)(ii)(C) of this section, with the notice provided under paragraph (g) of this section, using language that is substantially similar to model clauses on the escrow requirement in appendix C.

(3) *Exception.* (i) *Qualification.* Except as may be required under applicable State law, paragraphs (e)(1) and (2) of this section do not apply to a member bank:

(A) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(B) On or before July 6, 2012:

(1) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of a loan secured by residential improved real estate or a mobile home; and

(2) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

(ii) *Change in status.* If a member bank previously qualified for the exception in paragraph (e)(3)(i) of this section, but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the member bank must begin escrowing premiums and fees for flood insurance pursuant to paragraph (e)(1) of this section:

(A) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year; or

(B) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(C) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first

loan payment after the flood insurance policy is established.

(4) *Change in ownership.* If a member bank that is required to comply with paragraph (e)(1) of this section acquires a designated loan covered by flood insurance required under paragraph (c) of this section that becomes subject to paragraph (e)(1) of this section as a result of the member bank's acquisition of the loan, the member bank must begin escrowing premiums and fees for flood insurance pursuant to paragraph (e)(1) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan.

(f) *Required use of standard flood hazard determination form.*—(1) *Use of form.* A member bank shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A member bank may obtain the standard flood hazard determination form from FEMA's Web site at www.fema.gov.

(2) *Retention of form.* A member bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

(g) *Force placement of flood insurance.* (1) *Notice and purchase of coverage.* If a member bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under paragraph (c) of this section, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under paragraph (c) of this section, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the member bank or its servicer shall purchase insurance on the borrower's behalf. The member bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees

incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(2) *Termination of force-placed insurance.* (i) *Termination and refund.* Within 30 days of receipt by a member bank, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the member bank or its servicer shall:

(A) Notify the insurance provider to terminate any insurance purchased by the member bank or its servicer under paragraph (g)(1) of this section; and

(B) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the member bank or its servicer under paragraph (g)(1) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the member bank or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the member bank or its servicer during such period.

(ii) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (g)(2)(i) of this section, a member bank or its servicer shall accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.

(h) *Determination fees.*—(1) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any member bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(2) *Borrower fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the borrower if the determination:

(i) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(ii) Reflects the Administrator of FEMA's revision or updating of flood plain areas or flood-risk zones;

(iii) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(A) Affects the area in which the building or mobile home securing the loan is located; or

(B) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(iv) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under paragraph (g) of this section.

(3) *Purchaser or transferee fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

(i) *Notice of special flood hazards and availability of Federal disaster relief assistance.* When a member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(1) *Contents of notice.* The written notice must include the following information:

(i) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(ii) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(iii) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP;

(iv) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP also may be available from a private insurance company that issues policies on behalf of the company;

(v) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and

(vi) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by

flooding in a Federally declared disaster.

(2) *Timing of notice.* The member bank shall provide the notice required by paragraph (i)(1) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(3) *Record of receipt.* The member bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(4) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (i)(1) of this section, a member bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The member bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(5) *Use of prescribed form of notice.* A member bank will be considered to be in compliance with the requirement for notice to the borrower of this paragraph (i) of this section by providing written notice to the borrower containing the language presented in appendix A of this section within a reasonable time before the completion of the transaction. The notice presented in appendix A of this section satisfies the borrower notice requirements of the Act.

(j) *Notice of servicer's identity.* (1) *Notice requirement.* When a member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the member bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(2) *Transfer of servicing rights.* The member bank shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (j)(1) of this section within 60

days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (j)(1) of this section, the duty to provide notice under this paragraph (j)(2) of this section shall transfer to the transferee servicer.

APPENDIX A TO § 208.25—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Administrator of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Administrator of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

— The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- At a minimum, flood insurance purchased must cover *the lesser of*:

(1) the outstanding principal balance of the loan; or

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures your loan and not the land itself.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

Availability of Private Flood Insurance Coverage

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

[Escrow Requirement for Residential Loans]

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the insurance provider.]

Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally declared flood disaster.

APPENDIX B TO § 208.25—SAMPLE FORM OF NOTICE OF REQUIREMENT TO ESCROW FOR OUTSTANDING LOANS

Notice of Escrow Requirement

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

How the Escrow Will Work

Federal law requires that you pay flood insurance premiums and fees with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

When the Escrow Will Start

When you receive your next flood insurance bill with the renewal of your

policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the bank will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert Name of Lender or Servicer] at [Insert Contact Information].

APPENDIX C TO § 208.25—SAMPLE ESCROW REQUIREMENT CLAUSE FOR LOANS THAT BECOME DESIGNATED LOANS

Escrow Requirement Clause

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

Federal Deposit Insurance Corporation 12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations to read as follows:

■ 1. Part 339 is revised to read as follows:

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

339.1 Authority, purpose, and scope.

339.2 Definitions.

339.3 Requirement to purchase flood insurance where available.

339.4 Exemptions.

339.5 Escrow requirement.

339.6 Required use of standard flood hazard determination form.

339.7 Force-placement of flood insurance.

339.8 Determination fees.

339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

339.10 Notice of servicer's identity.

Appendix A to Part 339—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Appendix B to Part 339—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

Appendix C to Part 339—Sample Escrow Requirement Clause for Loans that Become Designated Loans

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 339.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 339.6 and 339.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 339.6 and 339.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 339.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *FDIC-supervised institution* means any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(g)

of the Federal Deposit Insurance Act, 12 U.S.C. 1813(g).

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is

(A) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(B) In the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial policy, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State where the property to be insured is located;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) Includes all of the following:

(A) A requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the FDIC-supervised institution;

(B) Information about the availability of flood insurance coverage under the NFIP;

(C) A mortgage interest clause similar to the clause contained in a standard flood insurance policy under the NFIP; and

(D) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

(j) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(k) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(l) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

(m) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§ 339.3 Requirement to purchase flood insurance where available.

(a) *In general.* An FDIC-supervised institution shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* An FDIC-supervised institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purpose of this part.

(c) *Private flood insurance.* (1) *Mandatory acceptance.* An FDIC-supervised institution must accept private flood insurance, as defined in § 339.2(i), as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (a) of this section.

(2) *Safe harbor.* A flood insurance policy shall be deemed to meet the definition of private flood insurance in § 339.2(i) for purposes of paragraph (a) of this section if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance in § 339.2(i).

§ 339.4 Exemptions.

The flood insurance requirement prescribed by § 339.3 does not apply with respect to:

(a) Any state-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of states falling within this exemption; or

(b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

§ 339.5 Escrow requirement.

(a) *In general.* (1) *Applicability.* Except as provided in paragraph (c) of this section, an FDIC-supervised institution, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 339.3(a) for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are made for the duration of the loan, unless the FDIC-supervised institution has determined that:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes; or

(ii) The borrower has obtained flood insurance coverage that meets the requirements of § 339.3(a) for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of § 339.3(a).

(2) *Timing.* An FDIC-supervised institution that is subject to paragraph (a) of this section, other than due to a change in status under paragraph (c)(2) of this section or for acquired loans subject to paragraph (d) of this section, shall begin escrowing premiums and fees for flood insurance:

(i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(ii) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 6, 2014, with

the first loan payment after the flood insurance policy is established.

(3) *Escrow account.* The FDIC-supervised institution, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the FDIC-supervised institution, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* An FDIC-supervised institution that is required to comply with paragraph (a) of this section, or a servicer acting on its behalf, shall mail or deliver a written notice informing the borrower that the FDIC-supervised institution is required to escrow all premiums and fees for required flood insurance:

(1) For loans subject to paragraphs (a)(2)(i), (c)(2)(i), or (d) of this section, at least 90 days before the escrow of premiums and fees under paragraphs (a)(2)(i), (c)(2)(i), or (d), using language that is substantially similar to the model form in appendix B; or

(2) For loans subject to paragraphs (a)(2)(ii) or (c)(2)(ii) of this section, with the notice provided under § 339.9, using language that is substantially similar to model clauses on the escrow requirement in appendix A; or

(3) For loans subject to paragraphs (a)(2)(iii) or (c)(2)(iii) of this section, with the notice provided under § 339.7, using language that is substantially similar to model clauses on the escrow requirement in appendix C.

(c) Exception.

(1) *Qualification.* Except as may be required under applicable State law, paragraphs (a)(1) and (2) of this section do not apply to an FDIC-supervised institution:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of

a loan secured by residential improved real estate or a mobile home; and

(B) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If an FDIC-supervised institution previously qualified for the exception in paragraph § 339.5(c)(1), but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the FDIC-supervised institution must begin escrowing premiums and fees for flood insurance pursuant to § 339.3(a):

(i) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year; or

(ii) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first loan payment after the flood insurance policy is established.

(d) *Change in ownership.* If an FDIC-supervised institution that is required to comply with paragraph (a) of this section acquires a designated loan covered by flood insurance required under § 339.3(a) that becomes subject to paragraph (a) of this section as a result of the FDIC-supervised institution's acquisition of the loan, the FDIC-supervised institution must begin escrowing premiums and fees for flood insurance pursuant to paragraph (a) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan.

§ 339.6 Required use of standard flood hazard determination form.

(a) *Use of form.* An FDIC-supervised institution shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. An FDIC-supervised institution may obtain the standard flood hazard

determination form from FEMA's Web site at www.fema.gov.

(b) *Retention of form.* An FDIC-supervised institution shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the FDIC-supervised institution owns the loan.

§ 339.7 Force-placement of flood insurance.

(a) *Notice and purchase of coverage.* If an FDIC-supervised institution, or a servicer acting on its behalf, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 339.3, then the FDIC-supervised institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 339.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the FDIC-supervised institution or its servicer shall purchase insurance on the borrower's behalf. The FDIC-supervised institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance.* (1) *Termination and refund.* Within 30 days of receipt by an FDIC-supervised institution, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the FDIC-supervised institution or its servicer shall:

(A) Notify the insurance provider to terminate any insurance purchased by the FDIC-supervised institution or its servicer under paragraph (a) of this section; and

(B) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the FDIC-supervised institution or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the FDIC-supervised institution or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the FDIC-supervised institution or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, an FDIC-supervised institution or its servicer shall accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.

§ 339.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any FDIC-supervised institution, or a servicer acting on its behalf, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 339.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When an FDIC-supervised institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the FDIC-supervised

institution shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue flood insurance policies on behalf of the NFIP or directly from the NFIP;

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company.

(5) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and

(6) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(c) *Timing of notice.* The FDIC-supervised institution shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the FDIC-supervised institution provides notice to the borrower and in any event no later than the time the FDIC-supervised institution provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The FDIC-supervised institution shall retain a record of the receipt of the notices by the borrower and the servicer for the

period of time the FDIC-supervised institution owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, an FDIC-supervised institution may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The FDIC-supervised institution shall retain a record of the written assurance from the seller or lessor for the period of time the FDIC-supervised institution owns the loan.

(f) *Use of prescribed form of notice.* An FDIC-supervised institution will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

§ 339.10 Notice of servicer's identity.

(a) *Notice requirement.* When an FDIC-supervised institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the FDIC-supervised institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the FDIC-supervised institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The FDIC-supervised institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator or his or her designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Part 339—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Administrator of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Administrator of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- At a minimum, flood insurance purchased must cover *the lesser of*:

- (1) the outstanding principal balance of the loan; *or*

- (2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures your loan and not the land itself.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

Availability of Private Flood Insurance Coverage

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance

companies and ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

[Escrow Requirement for Residential Loans]

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the insurance provider.]

Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Appendix B to Part 339—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

Notice of Escrow Requirement

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

How the Escrow Will Work

Federal law requires that you pay flood insurance premiums and fees with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

When the Escrow Will Start

When you receive your next flood insurance bill with the renewal of your policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the bank will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your

flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert Name of Lender or Servicer] at [Insert Contact Information].

Appendix C to Part 339—Sample Escrow Requirement Clause for Loans that Become Designated Loans

Escrow Requirement Clause

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

PART 391—FORMER OFFICE OF THRIFT SUPERVISION REGULATIONS

■ 2. The authority citation for Part 391 continues to read as follows:

Authority: 12 U.S.C. 1819.

Subpart D—[Removed and Reserved]

■ 3. Remove and reserve Subpart D consisting of §§ 391.30 through 391.39.

Farm Credit Administration

12 CFR CHAPTER VI

Authority and Issuance

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

■ 1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

■ 2. Part 614 is amended by revising subpart S to read as follows:

Subpart S—Flood Insurance Requirements

Sec.

614.4920 Purpose and scope.

614.4925 Definitions.

614.4930 Requirement to purchase flood insurance where available.

614.4935 Escrow requirement.

614.4940 Required use of standard flood hazard determination form.

614.4945 Force placement of flood insurance.

614.4950 Determination fees.

614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.

614.4960 Notice of servicer's identity.

Appendix A to Subpart S of Part 614—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Appendix B to Subpart S of Part 614—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

Appendix C to Subpart S of Part 614—Sample Escrow Requirement Clause for Loans that Become Designated Loans

Subpart S—Flood Insurance Requirements

§ 614.4920 Purpose and scope.

(a) *Purpose.* This subpart implements the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(b) *Scope.* This subpart, except for §§ 614.4940 and 614.4950, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 614.4940 and 614.4950 apply to loans secured by buildings or mobile homes, regardless of location.

§ 614.4925 Definitions.

For the purposes of this subpart:

(a) *1968 Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a state or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the 1968 Act.

(f) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

(h) *NFIP* means the National Flood Insurance Program authorized under the 1968 Act.

(i) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(ii) In the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial policy, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State where the property to be insured is located;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) Includes all of the following:

(i) A requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the System institution;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in a standard flood insurance policy under the NFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

(j) *Residential improved real estate* means real estate upon which a home or

other residential building is located or to be located.

(k) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(l) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

(m) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§ 614.4930 Requirement to purchase flood insurance where available.

(a) *In general.* A System institution shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance purchased under the NFIP or private flood insurance, as that term is defined in § 614.4925, for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the 1968 Act. Flood insurance coverage under the 1968 Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* A System institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purpose of this subpart.

(c) *Private flood insurance.*

(1) *Mandatory acceptance.* A System institution must accept private flood insurance, as defined in § 614.4925, as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (a) of this section.

(2) *Safe harbor.* A flood insurance policy shall be deemed to meet the definition of private flood insurance in § 614.4925 for purposes of paragraph (a) of this section if a State insurance

regulator makes a determination in writing that the policy meets the definition of private flood insurance in § 614.4925.

(d) The flood insurance requirement of paragraph (a) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of 1 year or less.

§ 614.4935 Escrow requirement.

(a) *In general.*

(1) *Applicability.* Except as provided in paragraph (c) of this section, a System institution, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 614.4930(a) for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are made for the duration of the loan, unless the System institution has determined that:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes; or

(ii) The borrower has obtained flood insurance coverage that meets the requirement of § 614.4930(a) for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of § 614.4930(a).

(2) *Timing.* A System institution that is subject to paragraph (a) of this section, other than due to a change in status under paragraph (c)(2) of this section or for acquired loans subject to paragraph (d) of this section, shall begin escrowing premiums and fees for flood insurance:

(i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(ii) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 6, 2014, with the first loan payment after the flood insurance policy is established.

(3) *Escrow account.* The System institution, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the System institution, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* A System institution that is required to comply with paragraph (a) of this section, or a servicer acting on its behalf, shall mail or deliver a written notice informing the borrower that the System institution is required to escrow all premiums and fees for required flood insurance:

(1) For loans subject to paragraph (a)(2)(i) or (c)(2)(i) or (d) of this section, at least 90 days before the escrow of premiums and fees under paragraph (a)(2)(i) or (c)(2)(i) or (d), using language that is substantially similar to the model form in Appendix B; or

(2) For loans subject to paragraph (a)(2)(ii) or (c)(2)(ii) of this section, with the notice provided under § 614.4945, using language that is substantially similar to model clauses on the escrow requirement in Appendix A; or

(3) For loans subject to paragraph (a)(2)(iii) or (c)(2)(iii) of this section, with the notice provided under § 614.4955, using language that is substantially similar to model clauses on the escrow requirement in Appendix C.

(c) *Exception.* (1) *Qualification.* Except as may be required under applicable State law, paragraph (a)(1) and (2) of this section do not apply to a System institution:

(i) That has total assets of less than \$1 billion as of December 31 of either of the 2 prior calendar years; and

(ii) On or before July 6, 2012:

(A) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of a loan secured by residential improved real estate or a mobile home; and

(B) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If a System institution previously qualified for the exception in § 614.4935(c)(1), but no longer qualifies for the exception because it had assets of \$1 billion or more for 2 consecutive calendar year ends, the System institution must begin escrowing premiums and fees for flood insurance pursuant to § 614.4930(a):

(i) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year; or

(ii) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first loan payment after the flood insurance policy is established.

(d) *Change in ownership.* If a System institution that is required to comply with paragraph (a) of this section acquires a designated loan covered by flood insurance required under § 614.4930(a) that becomes subject to paragraph (a) of this section as a result of the System institution's acquisition of the loan, the System institution must begin escrowing premiums and fees for flood insurance pursuant to paragraph (a) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is 6 months from the transfer date of the loan.

§ 614.4940 Required use of standard flood hazard determination form.

(a) *Use of form.* A System institution shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic

manner. A System institution may obtain the standard flood hazard determination form from FEMA's Web site at www.fema.gov.

(b) *Retention of form.* A System institution shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the System institution owns the loan.

§ 614.4945 Force-placement of flood insurance.

(a) *Notice and purchase of coverage.*

If a System institution, or a servicer acting on its behalf, determines, at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 614.4930, then the System institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 614.4930, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the System institution or its servicer shall purchase insurance on the borrower's behalf. The System institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance.* (1) *Termination and refund.* Within 30 days of receipt by a System institution, or its servicer, of a confirmation of a borrower's existing flood insurance coverage, the System institution or its servicer shall:

(i) Notify the insurance provider to terminate any insurance purchased by the System institution or its servicer under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the System institution or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the System institution or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the System institution or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's

existing flood insurance coverage under paragraph (b) of this section, a System institution or its servicer shall accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.

§ 614.4950 Determination fees.

(a) *General.* Notwithstanding any federal or state law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any System institution, or a servicer acting on its behalf, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 614.4945.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a System institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the System institution shall mail or deliver a written notice to the borrower and to the servicer of the loan. Notice

is required whether or not flood insurance is available under the 1968 Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue flood insurance policies on behalf of the NFIP or directly from the NFIP; and

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from a private insurance company that issues policies on behalf of the company.

(5) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and

(6) A statement whether federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a federally declared disaster.

(c) *Timing of notice.* The System institution shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the System institution provides notice to the borrower and in any event no later than the time the System institution provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The System institution shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the System institution owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a System institution may obtain satisfactory written assurance from a

seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The System institution shall retain a record of the written assurance from the seller or lessor for the period of time the System institution owns the loan.

(f) *Use of prescribed form of notice.* A System institution will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the 1968 Act.

§ 614.4960 Notice of servicer's identity.

(a) *Notice requirement.* When a System institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the System institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the System institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The System institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Subpart S of Part 614—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Administrator of the Federal Emergency Management Agency (FEMA) as a special

flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____ . This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Administrator of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

- At a minimum, flood insurance purchased must cover *the lesser of*:
(1) the outstanding principal balance of the loan; *or*

- (2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the improvements that have been made to the real property that secure the loan and not the land itself.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

Availability of Private Flood Insurance Coverage

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

[Escrow Requirement for Residential Loans

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the insurance provider.]

Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for federal disaster relief assistance in the event of a federally-declared flood disaster.

Appendix B to Subpart S of Part 614— Sample Form of Notice of Requirement to Escrow for Outstanding Loans

Notice of Escrow Requirement

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

How the Escrow Will Work

Federal law requires that you pay flood insurance premiums and fees with the same frequency as your loan payments for the duration of your loan. Your premiums will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

When the Escrow Will Start

When you receive your next flood insurance bill with the renewal of your policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the institution will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert

Name of Lender or Servicer] at [Insert Contact Information].

Appendix C to Subpart S of Part 614— Sample Escrow Requirement Clause for Loans That Become Designated Loans

Escrow Requirement Clause

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

National Credit Union Administration 12 CFR CHAPTER VII

Authority and Issuance

For the reasons set forth in the joint preamble, the NCUA Board proposes to revise part 760 of chapter VII of title 12 of the Code of Federal Regulations to read as follows:

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

- 760.1 Authority, purpose, and scope.
 - 760.2 Definitions.
 - 760.3 Requirement to purchase flood insurance where available.
 - 760.4 Exemptions.
 - 760.5 Escrow requirement.
 - 760.6 Required use of standard flood hazard determination form.
 - 760.7 Force-placement of flood insurance.
 - 760.8 Determination fees.
 - 760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
 - 760.10 Notice of servicer's identity.
- Appendix A to Part 760—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance
- Appendix B to Part 760—Sample Form of Notice of Requirement to Escrow for Outstanding Loans
- Appendix C to Part 760—Sample Escrow Requirement Clause for Loans that Become Designated Loans

Authority: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 760.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1757, 1789 and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope*. This part, except for §§ 760.6 and 760.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 760.6 and 760.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 760.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(c) *Credit union* means a Federal or State-chartered credit union that is insured by the National Credit Union Share Insurance Fund.

(d) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(e) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(f) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term “mobile home” does not include a recreational vehicle. For purposes of this part, the term “mobile home” means a mobile home on a permanent foundation. The term “mobile home” includes a manufactured home as that term is used in the NFIP.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State where the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring non-residential commercial policies;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) Includes all of the following:

(i) A requirement for the insurer to give 45 days’ written notice of cancellation or non-renewal of flood insurance coverage to the insured and the credit union;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in a standard flood insurance policy under the NFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

(j) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(k) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(l) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

(m) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§ 760.3 Requirement to purchase flood insurance where available.

(a) *In general*. A credit union shall not make, increase, extend, or renew any

designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loan*. A credit union that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

(c) *Private flood insurance*.

(1) *Mandatory acceptance*. A credit union must accept private flood insurance, as defined in § 760.2(i), as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (a) of this section.

(2) *Safe harbor*. A flood insurance policy shall be deemed to meet the definition of private flood insurance in § 760.2(i) for purposes of paragraph (a) of this section if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance in § 760.2(i).

§ 760.4 Exemptions.

The flood insurance requirement prescribed by § 760.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

§ 760.5 Escrow requirement.

(a) *In general*. (1) *Applicability*. Except as provided in paragraph (c) of this section, a credit union, or a servicer acting on behalf of the credit union, shall require the escrow of all premiums and fees for any flood insurance required under § 760.3(a) for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are

made for the duration of the loan, unless the credit union has determined that:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) The borrower has obtained flood insurance coverage that meets the requirement of § 760.3(a) for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of § 760.3(a).

(2) *Timing.* A credit union that is subject to paragraph (a) of this section, other than due to a change in status under paragraph (c)(2) of this section or for acquired loans subject to paragraph (d) of this section, shall begin escrowing premiums and fees for flood insurance:

(i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(ii) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 6, 2014, with the first loan payment after the flood insurance policy is established.

(3) *Escrow account.* The credit union, or a servicer acting on behalf of the credit union, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the credit union, or a servicer acting on behalf of the credit union, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* A credit union that is required to comply with paragraph (a) of this section, or a servicer acting on behalf of the credit union, shall mail or

deliver a written notice informing the borrower that the credit union is required to escrow all premiums and fees for required flood insurance:

(1) For loans subject to paragraphs (a)(2)(i), (c)(2)(i), or (d) of this section, at least 90 days before the escrow of premiums and fees under paragraphs (a)(2)(i), (c)(2)(i), or (d), using language that is substantially similar to the model form in appendix B;

(2) For loans subject to paragraphs (a)(2)(ii) or (c)(2)(ii) of this section, with the notice provided under § 760.9, using language that is substantially similar to model clauses on the escrow requirement in appendix A; or

(3) For loans subject to paragraphs (a)(2)(iii) or (c)(2)(iii) of this section, with the notice provided under § 760.7, using language that is substantially similar to model clauses on the escrow requirement in appendix C.

(c) *Exception.*

(1) *Qualification.* Except as may be required under applicable State law, paragraphs (a)(1) and (2) of this section do not apply to a credit union:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of a loan secured by residential improved real estate or a mobile home; and

(B) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If a credit union previously qualified for the exception in paragraph § 760.5(c)(1), but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the credit union must begin escrowing premiums and fees for flood insurance pursuant to § 760.3(a):

(i) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year;

(ii) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first loan payment after the flood insurance policy is established.

(d) *Change in ownership.* If a credit union that is required to comply with paragraph (a) of this section acquires a designated loan covered by flood insurance required under § 760.3(a) that becomes subject to paragraph (a) of this section as a result of the credit union's acquisition of the loan, the credit union must begin escrowing premiums and fees for flood insurance pursuant to paragraph (a) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan.

§ 760.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A credit union shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A credit union may obtain the standard flood hazard determination form from FEMA's Web site at www.fema.gov.

(b) *Retention of form.* A credit union shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the credit union owns the loan.

§ 760.7 Force-placement of flood insurance.

(a) *Notice and purchase of coverage.* If a credit union, or a servicer acting on behalf of the credit union, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance, or is covered by flood insurance in an amount less than the amount required under § 760.3, then the credit union or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 760.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the credit union or its servicer shall purchase insurance on the borrower's behalf. The credit union or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage

beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance.* (1) *Termination and refund.* Within 30 days of receipt by a credit union, or a servicer acting on the credit union's behalf, of a confirmation of a borrower's existing flood insurance coverage, the credit union, or its servicer shall:

(i) Notify the insurance provider to terminate any insurance purchased by the credit union or its servicer under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the credit union or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the credit union or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the credit union or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, a credit union or its servicer shall accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.

§ 760.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any credit union, or a servicer acting on behalf of the credit union, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the credit union or its servicer on behalf of the borrower under § 760.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a credit union makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the credit union shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue flood insurance policies on behalf of the NFIP or directly from the NFIP;

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company;

(5) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and

comparisons of flood insurance coverage to an insurance agent; and

(6) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(c) *Timing of notice.* The credit union shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction and to the servicer as promptly as practicable after the credit union provides notice to the borrower and in any event no later than the time the credit union provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The credit union shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the credit union owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a credit union may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The credit union shall retain a record of the written assurance from the seller or lessor for the period of time the credit union owns the loan.

(f) *Use of prescribed form of notice.* A credit union will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

§ 760.10 Notice of servicer's identity.

(a) *Notice requirement.* When a credit union makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the credit union shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the credit union's notice of the servicer's identity. This notice may be provided electronically if electronic

transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The credit union shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Part 760—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Administrator of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Administrator of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- At a minimum, flood insurance purchased must cover the *lesser of*:
 - (1) the outstanding principal balance of the loan; or
 - (2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the building or mobile home and

any personal property that secures your loan and not the land itself.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

Availability of Private Flood Insurance Coverage

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

[Escrow Requirement for Residential Loans]

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the insurance provider.]

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Appendix B to Part 760—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

Notice of Escrow Requirement

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

How the Escrow Will Work

Federal law requires that you pay flood insurance premiums and fees with the same

frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

When the Escrow Will Start

When you receive your next flood insurance bill with the renewal of your policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the credit union will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert Name of Lender or Servicer] at [Insert Contact Information].

Appendix C to Part 760—Sample Escrow Requirement Clause for Loans That Become Designated Loans

Escrow Requirement Clause

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

Dated: October 9, 2013.

Thomas J. Curry,
Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 10, 2013.

Robert deV. Frierson,
Secretary of the Board.

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 8th day of October, 2013.

Robert E. Feldman,

Executive Secretary.

By order of the Board of the Farm Credit Administration.

Dated at McLean, VA, this 10th day of October, 2013.

Dale Aultman

Secretary.

By order of the Board of the National Credit Union Association.

Dated at Alexandria, VA, this 9th day of October, 2013.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013-24724 Filed 10-29-13; 8:45 am]

BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P; 6705-01-P; 7535-01-U

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Federal Register

Vol. 78, No. 210

Wednesday, October 30, 2013

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Presidential Documents

Executive orders and proclamations **741-6000****The United States Government Manual** **741-6000**

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

60177-60652.....	1	62357-62416.....	21
60653-61152.....	2	62417-62954.....	22
61153-61802.....	3	62955-63368.....	23
61803-61936.....	4	63369-63822.....	24
61937-61948.....	7	63823-64152.....	25
61949-61982.....	8	64153-64388.....	28
61983-61988.....	9	64389-64872.....	29
61989-62004.....	10	64873-65144.....	30
62005-62292.....	11		
62293-62304.....	15		
62305-62328.....	16		
62329-62334.....	17		
62335-62356.....	18		

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:

51.....60784

3 CFR

Proclamations:

9024.....60177

9025.....60179

9026.....61151

9027.....61803

9028.....61805

9029.....61807

9030.....61809

9031.....61811

9032.....61813

9033.....61815

9034.....62305

9035.....62307

9036.....62309

9037.....62311

9038.....62313

9039.....62315

9040.....62335

9041.....62337

9042.....62339

9043.....62955

9044.....62957

9045.....64387

Executive Orders

11145 (Continued by

13652).....63367

11183 (Continued by

13652).....63367

11287 (Continued by

13652).....63367

11612 (Continued by

13652).....63367

12131 (Continued by

13652).....63367

12216 (Continued by

13652).....63367

12367 (Continued by

13652).....63367

12382 (Continued by

13652).....63367

12829 (Continued by

13652).....63367

12905 (Continued by

13652).....63367

12994 (Continued by

13652).....63367

13231 (Continued by

13652).....63367

12365 (Continued by

13652).....63367

13640 (Continued by

13652).....63367

13515 (Continued by

13652).....63367

13521 (Continued by

13652).....63367

13522 (Continued by

13652).....63367

13532 (Continued by

13652).....63367

13538 (Continued by

13652).....63367

13539 (Continued by

13652).....63367

13540 (Continued by

13652).....63367

13559 (Continued by

13652).....63367

13634 (Continued by

13652).....63367

13600 (Continued by

13652).....63367

13621 (Continued by

13652).....63367

13631 (Continued by

13652).....63367

13585 (Superseded in

part by 13652).....63367

13591 (Superseded in

part by 13652).....63367

13538 (Amended by

13652).....63367

13043 (Amended by

13652).....63367

13231 (Amended by

13652).....63367

13652.....61817

Administrative Orders

Memorandums:

Memo. of September

27, 2013.....62413

Notices:

Notice of October 16,

2013.....62341

Notice of October 23,

2013.....64151

Presidential

Determinations:

No. 2014-01 of

October 2, 2013.....62415

No. 2014-02 of

October 10, 2013.....62953

No. 2013-17 of

September 30,

2013.....63367

5 CFR

532.....60181, 60182

890.....60653, 64873

892.....64873

894.....64873

2641.....61153

7 CFR

205.....61154

210.....64153

215.....64153

220.....64153

225.....64153

226.....64153

245.....64153	60188, 60656, 60658, 60660,	356.....62417	117 .....61180, 62439, 64178,
301.....63369	60667, 60670, 60673, 60676,	Proposed Rules:	64886, 64887
305.....63373	60679, 60681, 61161, 61164,	351.....60240	165 .....60216, 60218, 60220,
920.....62959	61168, 61171, 61173, 61177,	20 CFR	60222, 60698, 61183, 61185,
922.....62961, 62963	63850, 63852, 63853, 63855,	718.....60686	61937, 62293, 63381
946.....62967	63858, 64156, 64159, 64162,	725.....60686	Proposed Rules:
Proposed Rules:	64164, 64394	21 CFR	117 .....63136, 64186, 64189
993.....63128	45.....63015, 63017	510.....63870	165.....61223
1210.....64408	71 .....60683, 61179, 63380,	520.....63870	34 CFR
8 CFR	63861	522.....63870	Proposed Rules:
Proposed Rules:	73 .....63860, 63866, 63867,	524.....63870	Ch. I–VI.....63913
293.....64183	63868, 63869	558.....63870	36 CFR
9 CFR	97 .....64167, 64168, 64170,	1240.....63872	7.....63069
Proposed Rules:	64172	Proposed Rules:	37 CFR
2.....63408	Proposed Rules:	16.....64425, 64736	Ch. I.....61185
3.....63408	25 .....62495, 63902, 64415	225.....64425, 64736	1.....62368
10 CFR	39 .....60798, 60800, 60804,	500.....64425, 64736	3.....62368
72.....63375	60807, 61220, 63130, 63132,	507 .....64425, 64428, 64736	11.....62368
429.....62970, 63823	63135, 63429, 63431, 63903,	579.....64425, 64736	38 CFR
430 .....62970, 62988, 63823	63907, 64417, 64419, 64421,	1308.....61991, 62500	17.....62441
431.....62970, 62988	64894	22 CFR	Proposed Rules:
Proposed Rules:	71 .....60235, 60236, 60237,	120.....61750	12.....63139
50.....63901	62498	121.....61750	17.....63143
51.....64412, 64413	73.....60238	123.....61750	39 CFR
55.....63901	15 CFR	126.....61750	Proposed Rules:
72.....63375	730.....61744	233.....64175	20.....63433, 63434
429 .....62472, 64068, 64296	732.....61744	24 CFR	111.....63915
430 .....62488, 62494, 63410,	734.....61744, 61874	903.....63748	40 CFR
64068	736.....61744	905.....63748	9.....62443
431.....62472, 64296	738.....61744, 61874	941.....63748	49.....60700
810.....64414	740.....61744, 61874	968.....63748	51.....62451
12 CFR	742.....61744, 61874	969.....63748	52 .....60225, 60704, 61188,
3.....62018	743.....61744	3282.....60193	62455, 62459, 63093, 63383,
5.....62018	744.....61744	25 CFR	63388, 63394, 63877, 63878,
6.....62018	746.....61744	543.....63873	63881, 63883, 63887, 64402
46.....64153	748.....61744, 61874	26 CFR	62.....63887
165.....62018	750.....61744, 61874	1.....62418, 62426, 64396	70.....63887
167.....62018	756.....61744	Proposed Rules:	80.....62462
208.....62018	758.....61744	1.....64430	81.....60704, 62459
217.....62018	762.....61744	27 CFR	180 .....60707, 60709, 60715,
225.....62018	764.....61744	9.....60686, 60690, 60693	60720
324.....62417	770.....61744	28 CFR	300.....60721, 63099
Ch. VI.....63380	772.....61744, 61874	524.....63875	312.....64403
610.....63379	774.....61744, 61874	29 CFR	721.....62443
741.....64879, 64883	Proposed Rules:	552.....60454	Proposed Rules:
748.....64883	922.....64186	4022.....62426	49.....62509
Ch. X.....64389	16 CFR	30 CFR	52 .....62523, 63145, 63148,
1002.....60382	4.....64885	250.....60208	63435, 63436, 63437, 63929,
1024.....60382, 62993	1112.....63019	924.....64397	63933, 63934, 63937, 64430,
1026.....60382, 62993	1218.....63019	Proposed Rules:	64896
1227.....63007	Proposed Rules:	925.....63909	62.....63937
Proposed Rules:	312.....64423	926.....63911	70.....63937
22.....65108	17 CFR	31 CFR	122.....64435
172.....65108	23.....64173	Ch. 11.....60695	123.....64435
208.....65108	232.....60684	32 CFR	127.....64435
339.....65108	Proposed Rules:	199.....62427	180.....63938
391.....65108	229.....60560	236.....62430	300.....60809
614.....65108	230.....61222	706.....62438	403.....64435
760.....65108	239.....61222	Proposed Rules:	501.....64435
13 CFR	249.....60560	199.....62506	503.....64435
121.....61114	18 CFR	33 CFR	42 CFR
124.....61114	40.....63036	100.....62329	412.....61191, 61197
125.....61114	19 CFR	Proposed Rules:	413.....61202
126.....61114	10.....60191, 63052	199.....62506	424.....61202
127.....61114	24.....60191, 63052	34 CFR	482.....61197
14 CFR	162.....60191, 63052	Proposed Rules:	485.....61197, 64604
25.....63845, 63847, 63848	163.....60191, 63052	100.....62329	489.....61197
34.....63015, 63017	178.....60191, 63052	35 CFR	Proposed Rules:
39 .....60182, 60185, 60186,	351.....62417	Proposed Rules:	121.....60810
	354.....62417		

43 CFR	87.....61203	174.....60745	63796, 64638, 64692
Proposed Rules:	Proposed Rules:	177.....60745	217.....63396
10.....64436	1.....64191, 64442	178.....60745	229.....61821
44 CFR	2.....64442	179.....60745	622.....61826, 61827, 61939,
Proposed Rules:	25.....64442	180.....60745	61989, 64181, 64888
206.....61227	27.....64191, 64442	350.....60226	648.....61828, 61838, 62331,
45 CFR	64.....61250, 63152	381.....60226	62471, 63405, 63406, 63892,
144.....65046	73.....61251	383.....60226	64182, 64889
146.....65046	101.....64442	384.....60226	679.....61990, 62005, 63899,
147.....65046	48 CFR	385.....60226	64891, 64892
153.....65046	Proposed Rules:	386.....60226	Proposed Rules:
155.....65046	1815.....64442	387.....60226	17.....60813, 61046, 61082,
156.....65046	1852.....64442	390.....63100	61273, 61293, 61622, 61764,
46 CFR	49 CFR	392.....60226	62523, 62529, 62560, 63574,
Proposed Rules:	107.....60726, 60745	395.....64179	63625, 64192, 64328, 64358,
153.....64905	109.....60755	Proposed Rules:	64446, 64840
47 CFR	130.....60745	Ch. VI.....61251	223.....63439, 63941
20.....64404	171.....60745	821.....63438	224.....63941
	172.....60745	50 CFR	622.....62579, 63946
	173.....60745, 60763, 60766	17.....60608, 60766, 61004,	679.....63951
		61208, 61452, 61506, 63100,	

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List October 18, 2013

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